

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
WHITE PLAINS; NY DIVISION

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**IN THE MATTER OF**  
Richard Holt, **DEBTOR**

**X**  
**CHAPTER 13**  
CASE NO. 16-23653-rdd

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**16-23653-rdd, DEBTOR**

**Plaintiff**  
v.  
**WAMU ASSET ACCEPTANCE CORP,**  
**NOT IN ITS INDIVIDUAL CAPACITY,**  
**COMPLAINT**

U.S. BANKRUPTCY COURT  
FILED  
2017 JUL 12 A 9:59  
S.D. OF N.Y.

**Defendant**  
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**X**

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**COMPLAINT OF THE PLAINTIFF PURSUANT TO 11 U.S.C. SECTION 506(A)  
AND BANKRUPTCY RULE 3012 TO DETERMINE THE VALUE OF  
SECURITY AND CREDITOR'S ALLOWED SECURED CLAIM AND  
COMPLAINT FOR DAMAGES, SANCTIONS AND INJUNCTIVE RELIEF**

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**I. INTRODUCTION**

1.1 This is an action for actual and punitive damages filed by the Plaintiff Richard Holt, (hereinafter "Plaintiff") pursuant to Sections 105, 362, 501, 502, 503 and 506 of the Bankruptcy Code, and Rules 2016(a), 3001, 7001(1), 7001(2), 7001(7), 7001(8) and 7001(9) of the Federal Rules of Bankruptcy Procedure to determine the interest of the Defendants in the residential real estate of the Plaintiff and determine the amount of the allowed secured claim, if any, of the Defendants.

1.2 This Complaint focuses on the improper accounting of escrow, fees, charges and misapplication of payments by various entities including the Defendant WAMU ASSET ACCEPTANCE CORP, "WMAA", Washington Mutual Bank, "WaMu", JPMorgan Chase Bank NA, "JPMCB", Washington Mutual FA, "WaMuFA" in the proof of claim filed against the Plaintiff's estate for improper amounts owed as certified by employees, agents and related parties of the Defendants and its attorneys, acting as agents, and in pleadings filed by the Defendant.

1.3 This Complaint focuses on the fraud perpetrated on the Court and the Plaintiff by the Defendant filing an earlier and false proof of claim together with fraudulent documents in support thereof and the Defendants' fraudulent misrepresentation of the owner of the Plaintiff's claimed Mortgage Loan and the identity of the real party in interest.

1.4 This Complaint focuses on the fraud perpetrated by the Defendant by way of its fabrication of documents.

1.5 This Complaint seeks declaratory judgment as to the precise nature and extent of any lien and debt claimed by the Defendant and its predecessors and successors.

## **II. PARTIES**

2.1 The Plaintiff in this case is a Debtor under Chapter 13 of Title 11 of the United States Code in case 16-23653-rdd which case was filed on December 1, 2016 and is presently pending before this Court.

2.2 Defendant WMAA is an investor and owner of mortgage loans.

WAMU ASSET ACCEPTANCE CORP is a Delaware Corporation, a chartered national bank, is headquartered in New York, NY and may be served by mailing a copy of the Summons and Complaint, via first class U.S. Mail, c/o THE CORPORATION TRUST COMPANY,, CORPORATION TRUST CENTER 1209 ORANGE ST DE 10017. The President of which is John Doe I or Jane Doe I, who is an officer suitable for purposes of service of process.

## **III. COMPLAINT**

### **A. JURISDICTION**

3.1 Jurisdiction is conferred on this Court pursuant to the provisions of Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above- captioned Chapter 13 case under Title 11 and concerns property claimed to that of the Debtor in that case.

3.2 This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code.

3.3 This Court has supplemental jurisdiction to hear all state law claims, if any, pursuant to Section 1367 of Title 28 of the United States Code. 3.4 The Plaintiff is informed and believes that this matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the

entry of a final order by the presiding United States Bankruptcy Judge.

## B. VENUE

3.5 Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

## RELEVANT FACTS

3.6 On or about March 22, 2000 non-party Washington Mutual Bank FA (hereinafter "WaMuFA" or "Originating Lender") allegedly made a mortgage loan to Plaintiff pertaining to 23 Ridgewood Road, CT 06830, (the "Property"), referred to in this Complaint as the "First Mortgage Loan" or "Mortgage Loan".

3.7 In connection with the First Mortgage Loan the Plaintiff, based on information and belief, is alleged to have executed a promissory note (the "First Mortgage Note") in the original principal amount of \$308,000 payable to WaMuFA.

3.8 The First Mortgage Note was allegedly secured by a Mortgage on the Property dated March 22, 2000, and based upon information and belief, is recorded with the Town Clerk for Norwalk, CT, (the "First Mortgage"), which names MaMuFA. as the Lender.

3.9 On or about December 1, 2016, the Plaintiff filed a petition for Chapter 13 Bankruptcy for the Southern District of New York, White Plains, NY Division and was assigned case number 16-23653-rdd, (hereinafter the Plaintiff's Bankruptcy Case).

3.10 On March 8, 2017, case history item #29, the Defendant through loan servicer JPMCB filed an objection to the Plaintiff's Chapter 13 filing. Attached to exhibit "C" thereof is a note indorsed on page 6 of 6 by Cynthia Riley, stating that she is a Vice President of Washington Mutual Bank, F.A. The Plaintiff is attaching this note, the "Cynthia Riley-note", as exhibit "A" hereto.

3.20 However, in a previous bankruptcy filing by the Plaintiff, 15-22704-rdd, on May 19, 2015, in the instant Court, the United States Bankruptcy Court for the Southern District of New York at White Plains, NY, the Defendant through its servicer filed a proof of claim, no 3, on September 17, 2015.

3.30 In Part 3-1 thereof, the Defendant through its servicer attached a copy of the note supporting the claim. This note is distinctively different than the Cynthia-Riley note proffered by the Defendant through its servicer on March 8, 2017 in case history item #29. On page 1 of 1, a bull's eye appears in upper right hand corner. The Plaintiff has learned that this bull's eye represents that the note has passed through a rigorous authentication procedure by the Defendant. On page 6 of 6, there is no indorsement by a

Cynthia Riley, but instead two indorsements by a Mykisha Rush, representing herself as a Vice President. On the first indorsement Rush states JP Morgan Chase Bank NA as successor in interest by purchase from the FDIC, as Receiver for Washington Mutual Bank, FA. On the second indorsement, Rush indorses the note in blank, also as Vice President of JP Morgan Chase Bank NA. The Plaintiff is attaching this note, the "Mykisha Rush-note", as exhibit "B" hereto.

3.40 Previously, in a case CV-02-0192482 dated October 29, 2002, Washington Mutual FA vs Richard L Holt et al, in the State of Connecticut Superior Court for the Judicial District of Stamford-Norwalk at Bridgeport, CT, WaMuFA, the "Original case", submitted an affidavit by a Kellie Rohling, "Rohling" a proclaimed Vice President of WAMUFA, a to which was attached yet another note, see Exhibit "C" attached hereto with the affidavit of Rohling as the PNOTE"-note. On page 1 of 1 of said note, appears a bar code "PNOTE", not present on the Cynthia Riley note or the Mykisha Rush-note. The "PNOTE"-note is also marked "BEST AVAILABLE DOCUMENT". In item 2 of Rohling's affidavit, she states "A true and accurate copy of the Note is attached as Exhibit "C".

3.50 In the Original case, i e 2002-case, see the Attached complaint therein, Exhibit "E", in item 3 of the wherefore clause, the Plaintiff, WaMuFA, is suing for money damages against the makers of, or obligors on, the Note described herein (unless same has been precluded by virtue of a Bankruptcy filing);

3.55 In the body of the complaint in the original case, on the first page, item 3 the Plaintiff, WaMuFA states: On or about March 22, 2000, the Defendants, Richard L. Holt individually and on behalf of Dorsum Nemus Limited Liability Company, executed and delivered to Washington Mutual Bank FA, a Note (the "Note) for a loan in original principal amount of \$308,000.00.

3.60 In item 4 of the first page, the Plaintiff, WaMuFA, states: On said date to secure said Note the Defendants, Richard L. Holt individually and on behalf of Dorsum Nemus Limited Liability Company , did execute and deliver to Washington Mutual Bank, FA, a mortgage o the Property, a copy of which is attached hereto as Exhibit "A. Said mortgage was dated March 22, 2000 and recorded March 27, 2000, in Volume 3876 at Page 250 of the Norwalk Land Record. The Plaintiff, Washington Mutual Bank, FA is the owner and holder of said Note and Mortgage.", Furthermore in item 5, "Said Note is in default and the Plaintiff, Washington Mutual as the owner and holder of said Mortgage and Note has elected to accelerate the balance due on said Note to be due in full and to foreclose the Mortgage securing said Note., then item 6 "The Plaintiff has elected to accelerate the balance due on said Note, to declare said Note to be due in full and to foreclose the Mortgage securing said Note".

3.70 Except. the allegations in the complaint were not true. As exhibit "E" attached here to shows, WaMuFA had returned the Defendant's payments to create a default that did not exist WaMuFA got caught by the Texas Attorney General, see

Exhibit "F", in systemically sending back and misplacing payment to cause foreclosure as practice and pattern. WaMuFA admitted this in a letter to the Plaintiff herein, Richard Holt's attorney in Germany, Jens Reissig, and that it would withdraw the foreclosure, see Exhibit "G".

3.80 Thereby, WaMuFA also admitted that the affidavit by Rohling, was perjurious, sworn under oath, to infer unclean hands upon WaMuFA and any successor, Nemo dat quod non habet, from ever foreclosing again in equity, see U.S. Supreme Court. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240 (1933). *Keystone Driller Co. v. General Excavator Co.* Nos. 34 and 35

"...1. He who comes into equity must come with clean hands. P. 290 U. S. 244.

2. This maxim applies only when some unconscionable act of the plaintiff has immediate and necessary relation to the equity he seeks in the litigation..."

"It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into court with clean hands. He must be frank and fair with the court, nothing about the case under consideration should be guarded, but everything that tends to a full and fair determination of the matters in controversy should be placed before the court.' *Story's Equity Jurisprudence* (14th Ed.) 98. The governing principle is 'that [290 U.S. 240, 245] whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' *Pomeroy, Equity Jurisprudence* (4th Ed.) 397. -

3.90 By suing for money damages under item 3 under the Wherefore-clause in its complaint, WaMuFA opted to enforce the note,, the money damages clause. It cannot do both. By suing under note, it effectively accepted cash, see *PK MOTORS, INC. v. Page*, Dist. Court, MD Florida 2007, a landmark case on notes and underlying transactions, attached as exhibit "H",

3.100 Furthermore, WaMuFA accepted yet another payment that it did account for and misplace, see exhibit "I". Hence, WaMu took cash and thereby released any claims to the perceived collateral, again see *PK Motors*, supra.

3.110 In addition, WaMuFA was never a PETE, A Person entitled to enforce. Contrary to its allegation in the original complaint, the note was only signed by one person, the Plaintiff herein Richard Holt, and not in a corporate capacity for Dorsum Nemus Limited Liability Company.

3.120 The mortgage, see exhibit "J", was only signed by Richard Holt, again not in a corporate capacity. The mortgage defines a Dorsum Lemus Limited Liability Company as the borrower and the wording thereof refers to a security instrument by the defined borrower, Dorsum Lemus Limited Liability Company. The complaint in the original case was false, Richard Holt, could not sign anything, He was not the owner of the property and could not mortgage it.

3.130 That the borrower was intended to be the company, Dorsum Nemus Limited Liability Company, is substantiated by the HUD-statement, see exhibit "K", clearly indicating it as the borrower.

3.140 The confusion is solely to blame WaMuFA for, or rather the attorney for the mortgage broker Northeast Mortgage LLC, Corporation in the closing. The quality assurance representative for WaMuFA had sent a list of corrections for the closing, see exhibit "L", however the errors were not corrected.

3.150 The mortgage broker could not correct the documentation, as it would have exposed that the Plaintiff, Richard Holt's signature, had been fored on the loan application, see exhibit "M".

3.160 Thus, WaMuFA ended up with half a note, i e missing a note signed by the supposed proper party, the company, as required by the mortgage. Then it ended up with a mortgage signed by a non-party, the Plaintiff herein, Richard Holt, not an owner of the property.

3.170 By not correcting the closing documents per the instruction of WaMuFA, the loan broker, Northeast Mortgage LLC, confused the closing attorney, who instructed Richard Holt to only sign as an individual.

3.180 Instead of contacting the parties, Richard Holt, and the company to correct the documents, WaMuFA took the drastic measure of trying to feign a foreclosure instead.

3.190 A negotiable instrument was not created because the Plaintiff did not intend to sign the note in a personal capacity and the Plaintiff received no consideration to create the negotiable instrument under UCC 3-310 b(2). There is no mortgage because a mortgage is an incident to the note and it cannot stand alone. The mortgage is not securing any note to which Dorsum Nemus Limited Liability Company is a part. see *NATIONAL CITY BANK v. SYATT REALTY GROUP, INC et al*, case No. 11-1777 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT , attached as exhibit "Q". See also *PK Motors* supra transaction reduced to the note.

3.200 The subsequent attempt by a claimed successor to foreclose, filed in Connecticut as case no. FST-CV08-5009720-S, JPMORGAN CHASE BANK v. HOLT,RICHARD Et Al, before the State of Connecticut Superior Court at Stamford, CT, see exhibit "N" in 2008, with the Cynthia Riley-note failed, by opting in 2002 to enforce the note, the collateral had already been released for six years, leaving the current claimed Creditor and the Plaintiff in the 2008-foreclosure without a remedy, even if the loan had been consummated and completed which it was not - because of the erroneous note and mortgage failing to form a negotiable instrument under UCC 3-310 b(2).

3.210 By introducing the PNOTE-note in 2002, admitting that it was was the true note in the Rohling-affidavit, WaMuFA waived any other note than the PNOTE-note in any proceeding. Hence, in 2008 WMAAC did not have an original note in its possession when commencing the foreclosure-action in the name of its servicer, JPMCB, , failing Connecticut case law *DEUTSCHE BANK NATIONAL TRUST COMPANY, Trustee v. Rodney THOMPSON et al.* No. 37362. Decided: March 22, 2016 -- the Plaintiff must be in possession of the note when filing the complaint, see attached exhibit "R", rendering the Connecticut 2008-proceeding invalid ab initio, and the asinine comments about the Plaintiff herein, Richard Holt's conduct therein a 380-page waste of paper, the Defendant objection to the Plaintiff's filing a Chapter 13, case history item #29.

3.220 By filing yet another version of the note in its proof-of-claim in the first White Plains-bankruptcy, case no. 15-22704-rdd, again attempting to enforce the debt, the Defendant herein, WMAAC through its servicer JPMCB, admitted that prior two notes, the PNOTE-NOTE and the Cynthia Riley-notes were false, retroactively waiving the prior note,

3.230 By this exercise, the Defendant through its servicer, JPMCB, has effectively created an implied res judicata in the 2002-case. WaMuFA is said case admitted wrongdoing and abandoned the case without a final judgment. By having the Plaintiff as the successor of WaMuFA via the FDIC, presenting the Mykisha Rush-note, it implies that is the ruling note, and that FDIC despite knowledge of the prior frauds, including the returned payments and the perjurious sworn affidavit by Rohling, is alleged have sold it the Plaintiff despite knowledge of the unlawful acts associated with it, which would effectively making the FDIC, a Government-owned entity complicit in forgery.

3.240 Now, the servicer JPMCB has come forward and nationated to that WMAAC is the true party in interest. The Plaintiff is including a stipulation to this effect from JPMCB and also the investor screens from WaMu's Mortgage Servicing Platform, "MSP" in the same exhibit, identifying the investor A01" as the true party in interest and the claimed owner of the instant loan, see Exhibit "P". Hence the foreclosure filed by the Defendant's servicer, JPMCB in 2008 was false and fraudulent and so were the proofs of claim filed by the Defendant's servicer JPMCB in the instant Court is 2015 and 2017.

3.250 At the time of the false foreclosure in 2002, WaMuFA alleged a debt of about \$368,000. In its proof of claim in 2015, the Defendant' servicer JPMCB, claimed a debt of around \$450,000 it is also claiming legal fees in excess of \$100,000. In 2002 the property, based on neighboring sales would be in the price range of \$800,000. In 2008, when the false foreclose in December of 2008 occurred of over \$1 million based on neighboring sales. Based on neighboring sales today, of \$1.2 million.

3.260 The claimed loan was not the standard loan at more than the value of the property. As the erroneous returned payments averred herein shows, the Plaintiff nor the property owner had any intentions of ceasing to pay. If it had not been for the false foreclosure in 2002, the instant property could easily have refinanced, considering the high equity, or sold at a considerable profit. This was no less true in 2008. The clock stopped, all interest was told from the breach of contract of WaMuFA, returning payment and manufacturing a foreclosure. Hence, not more would have been due WaMuFA then in 2002, minus the lost payment of about \$100,000. Selling the property in 2008 would therefore have brought \$700,000 in excess of any amount WaMu could have claimed, \$900,000 today, yet in its objection of March 8, 2017 in the instant court, case history item #29, the Defendant seems to suggest that the Plaintiff should walk away from the litigation since the Plaintiff has no personal equity in it, and "gift" the property to the Defendant.

3.270 However, the Plaintiff has considerable tort claims. The parties with an interest in the property, not only from the lost payment of about \$100,000 has sued for damages in the Swedish courts against the Federal Deposit Insurance Corporation, "FDIC", and Hunt-Leibert Jacobson, the attorneys for WaMuFA in the first foreclosure to whom the payment was remitted, and also the holding company of WaMu -- the latter upon advice of the FDIC. The amount claimed because of consequential damages is over \$10 million. The acceleration notice from WaMuFA in 2008 tallying the itemized items indicates that \$79978.64 is past due, which would have been amply covered by the lost payment of nearly \$100,000, i e there was no default in 2008, regardless of all other facts prohibiting the foreclosure action. The authenticity and validity of this computer generated default notice is questionable -- what kind of computer system would make a \$42,218.49 computation error. See exhibit "T".

3.280 The FDIC after the Plaintiff bringing a lawsuit for the involvement of the FDIC in in the instant matter in the United States Federal District Court for the Southern District of New York at Manhattan, contacted the Plaintiff that it had stated a dispute resolution case, to which the Plaintiff submitted his claim reflecting the consequential damages in Sweden -- to which also the Plaintiff would be liable if he "walked away" from the litigation over the property. The Plaintiff was informed that after the FDIC has processed the claim, the dispute resolution -- the Plaintiff may start his independent law

suit against the FDIC over the claimed torts -- this reflects the standard Federal torts claim-procedure.

3.290 While the FDIC dispute resolution is ongoing, the Plaintiff asked the Connecticut Court to stay the proceeding, which it did not, and the Defendant through its servicer refused, the Defendant through its servicer aiming to "run away" with the property before the Plaintiff has a possibility to commence his Federal law suit against the FDIC following the dispute resolution, which the Plaintiff later did in June of 2017.

3.300 In its objection of March 8, 2017, before the instant bankruptcy Court, the Defendant through its servicer, JPMCB, seems to suggest that the Plaintiff has been conducting a frivolous defense in the State court. This does not reflect the truth at, here is a brief timeline:

After commencing the lawsuit in 2008, the Defendant and its servicer did nothing until 2010, when it filed for a summary judgment based on a affidavit by an Ediba Trivuncic, who turned out to be a robo-signer. The summary judgment failed, but the Defendant brought a witness to the Court in 2011, a Jeremy Summerford, "Summerford", who swore before the Court that he had found the instant loan in the list referred to in the Purchase and Assumption Agreement between the FDIC as Receiver for WaMu and the Defendant of September 25, 2008. To this day, Summerford is the only one who has seen that list. FDIC has since affirmed, even on its web site that the list is a scrivener's error, it does not exist.

3.310 The Plaintiff's counsel, Larry Ginsberg asked after hearing the witness that the case be dismissed. The presiding Judge, Douglas Mintz, denied the request but at the same time allowed for the Plaintiff's discovery including the list. The Defendant's servicer's attorney at the hearing, stated that it was too big, millions of records if the Plaintiff recalls correctly and was an electronics file. Judge Mintz ordered it to be produced anyway, and later affirmed the Plaintiff's extensive production request.

3.320 What followed was a six year battle to get all the discovery from the Defendant' servicer. What the Defendant's servicer claims is dilatory on part of the Plaintiff is actually just a reflection of the Defendant's "cavalier"-attitude towards discovery. As an example, the Plaintiff is including a letter to the Plaintiff and his counsel from Brian Rich, the attorney for the Defendant's servicer dated December 12, 2013, see attached exhibit "O" where he claims that his client, the Defendant, has no knowledge of neither Cynthia Riley, the indorser of the Cynthia Riley-note, "Florida Munoz", actually Florina Munoz, who notarized the summary judgment affidavit in 2010, nor Margaret Dalton, "Dalton", who seems to have been the leader of Munoz's group, and perhaps the most notorious robosigner of all. Dalton is one of the few individuals, together with Summerford, the witness the Defendant brought in 2011, that claims to have seen the list of loans that the Defendant claims to have received from the FDIC.

3.330 The Plaintiff did get some discovery, fatal discovery for the Defendant and its servicer's case. The Plaintiff filed numerous motions to dismiss based on this discovery. Connecticut procedures mandates that the Motions to dismiss for lack of subject matter jurisdiction stops all other actions and must be heard first. The Connecticut court however has dodged this and decided these will be heard last.

3.340 The Plaintiff has also filed numerous motions to have the Defendant's servicer attorney sanctioned for failure to produce, to no avail.

3.350 The result has been 25 trial days so far, where the Plaintiff new "muck" in almost every sessions, brought no decision adverse to the Plaintiff, other than evasive decisions allowing the Defendant and its servicer to avoid discovery.

3.360 After the Defendant's failed attempt to achieve a summary judgment based on a false robo-signed affidavit in 2010, the Defendant spent almost a year to the Plaintiff's best recollection, breaking up the Plaintiff's Special Defenses, on requests to revise, breaking up the defenses from about a mere dozen, to about fifty. It then used that against the Plaintiff stating that the many defenses are indicative of the Plaintiff's dilatory practices.

3.370 The Connecticut court made a mistake in letting the Defendant's servicer's attorney see the Plaintiff's objection to the Defendant's subsequent motion to strike. When realizing that the motion to strike would raise issues that would have brought the case to an end in the Plaintiff's favor in the pre-trial phase, the Defendant's servicer attorney elected not to go through with its motion to strike.

3.380 How can the Defendant through its servicer in good faith claim that the Plaintiff's special defenses are dilatory, even bringing these to the instant bankruptcy Court, as an exhibit in its objection on March 8, 2017, case history item #29, when it waived any objections thereto?

3.390 Among the fatal discovery produced, was the investor screen in the Plaintiff's Master Servicing Platform, MSP, see attached exhibit "P"=. It indicates Investor "A01" which according to a witness from the Defendant in another case, is not an investor code of a WaMu-portfolio loan, but a loan owned by WMAAC, contrary to what the Defendant has claimed through its servicer, that the instant loan is owned by JPMCB, defeating the assertion by the Defendant's servicer that the instant loan is one that JPMCB acquired from the FDIC, and evidencing extrinsic fraud on the courts, when the 2008-foreclosure was filed.

3.400 The Plaintiff is also including the depositions, see attached exhibit "S", in another case of Cynthia Riley, "Riley", the indorser on the Cynthia Riley-note from 2011 and 2013, the part where she testifies that she never personally indorsed any notes. A later witness statement from the corporate representative, Wilkins Rodriguez, that the Defendant brought to the Connecticut trial also affirmed that the Cynthia Riley-note was

never even in her office in Jacksonville, Florida for her to indorse, which Riley herself also confirmed in her depositions.

3.410 Solely the investor screen and Cynthia Rileys-depositions would be sufficient to have ended the Connecticut trial, and the Defendant through its servicer has been back-pedalling ever since.

3.420 After becoming aware of the odd assignment, proffered as an exhibit herein exhibit "T", from October 7, 2014, November 7, 2014, the Plaintiff has attempted to move the foreclosure case to a Federal court, where it is not so easy to avoid discovery as in the Connecticut state Court. Along with the exhibit, the Plaintiff is including the contract between the FDIC and Nationwide Title Clearing, "Nationwide", which is the party that has concocted the false assignment. JPMCB and Nationwide are currently embroiled in a RICO-suit, (Racketeer-Influenced and Corrupt Organization), *15 CV 293-LTS-JCF, MORTGAGE RESOLUTION SERVICES, LLC, 1ST FIDELITY LOAN SERVICING, LLC, and S & A CAPITAL PARTNERS, INC., v. JPMORGAN CHASE BANK, N.A., CHASE HOME FINANCE LLC, and JPMORGAN CHASE & CO* before the United States District Court for the Southern District of New York. The Plaintiff cites from said case:

""The following is a partial list of wrongdoers, other than the named Defendants, whose actsintentionally facilitated the racketeering activity that Defendants perpetrated:

- Joseph A. Smith, Jr., Monitor under the NMS and RMBS Settlements;
- Professionals hired by the Monitor, including his own law firm, Poyner Spruill, LLP, Smith Moore Leatherwood LLP, BDO USA, Grant Thornton LLP, and others (the "Professionals");
- Other Servicers participating in the NMS and/or RMBS Settlements;
- Nationwide Title Clearing (NTC); and
- Third Party Collection Agencies.."

and:

"Other knowing participants in the conspiracy include third party title clearing agencies, such as Nationwide Title Clearing Company (NTC), Pierson Patterson, and LCS Financial Services, who were directed by Defendants to prepare and then file fraudulent lien releases and other documents affecting interests in property."

3.430 The Defendant through its servicer's attorney can hardly claim that this is dilatory -- it knew of the existence of the Mykisha Rush-note when the assignment was filed, yet withheld this knowledge from the Plaintiff until the proof of claim introduced in the instant bankruptcy Court in 2015.

3.440 Yet it let the Plaintiff go through two bankruptcy filings in 2015 and 2016, ruining his credit rating forever, that would not have been necessary had it informed the Connecticut court and the Plaintiff of the Mykisha Rush-note used for the 2014 assignment.

3.450 The Defendant simply has no sense of shame. In the Plaintiff's attempts to remove the case to Federal Court, and his lawsuits in the Federal courts, the Plaintiff has present the "contradictory" notes, also in the State of Connecticut appellate Court. Yet no one seems particularly concerned over the obvious falsifications. Has the justice systems become so jaded over the forgery of notes, which does not seem be isolated incidents, that it simply does not care anymore?

3.460 The Defendant trough its servicer however has introduced a forged note in the instant bankruptcy Court in its proof of claim from September 2016.

3.470 That proof of claim was an attempt to prove a debt by the Plaintiff personally, seeking to enforce a false note.

3.480 That proof of claim is the exclusive domain of the instant bankruptcy Court, not linked in any way to any foreclosure in Connecticut.

3.490 The Defendant through its servicer cannot prove a debt with a forged noted.

3.500 The Defendant through it servicer is now betting that it can avoid this confrontation before the instant bankruptcy Court by having the court find that the Plaintiff does not have a right to file in the instant bankruptcy Court, that the court lacks jurisdiction.

3.510 The Plaintiff asserts that the instant Court has jurisdiction. The Plaintiff has substantial connections to the district to having a business in the district and also had so in 2015. The Defendant through its servicer seeks to gain from its own maneuverings in the matter. Simultaneous with the occurrence of the assignment and the Mykisha Rush-note, the Plaintiff's business was in line to take over the newspaper it had been servicing for the past 25-year or so, in Manhattan, as its editor has died in the Fall of 2014. This had to be abandoned as the assignment emerged while the Plaintiff had been in Finland at the editor's funeral and where the future of the newspaper in New York was being decided.

3.520 The Plaintiff business in construction compliance was also part in a substantial project in Northern Sweden to manufacture unique rail roads sleepers in a infrastructure project that was intended for the Metropolitan Transit Authority, the "MTA". The Plaintiff can back this up with the approved proposals for the project by Swedish Government institutions and his attendance at a major international railroad technology conference in Berlin, Germany at the time. Because of the extreme

temperature shifts, between relatively harsh winters and tropical humidity summers, the MTA cannot use the concrete sleepers used by railroads elsewhere in the world. However, the wooden sleepers used today are impregnated with creosote, a toxic substance that must be phased out under environmental regulations.

3.540 The Plaintiff's project uses a unique material that resolves that problem. The project estimated in Sweden to account for considerable profits came to a screeching halt when the Plaintiff had to return to the US because of the litigation over the assignment.

3.550 The property in Connecticut is essential for the New York infrastructure projects. It is a unique construction shipped to the US from Sweden representing a design not common in the US with considerably ability to withstand fires and storms.

The design is inherent in among others a parking system the same Swedish group is also proposing to the MTA for automated mechanical parking along its network of suburban railway stations to optimize parking spaces, but that also have to housed in safe construction.

3.550 The Plaintiff's intended to return to Sweden to live and before taking his retirement coordinate the infrastructure projects there. Federal residency rules dictate that it is where a person intend and resides forever, which in the Plaintiff's case would not be in a property he does not own in Connecticut but where he is forced to stay while concluding the ongoing litigation.

3.560 The Defendant's attempt through its service to use a problem it has caused itself with it fraudulent concealments and fraudulent proof of claims and false foreclosures, the interruption in the Plaintiff's business in New York against the Plaintiff from access to the instant bankruptcy Court where the Defendant through its servicer has filed false documents is "gamesmanship" and vexatious litigation.

3.570 The Plaintiff ask that the bankruptcy Court as a sanction for the false note filed in the bankruptcy Court, and its role in dispute resolutions, declares that the Mykisha Rush-note is the genuine and ruling note under the ancient principle of the Montefiori-case. This would wipe out the foreclosures in 2002 and 2008, and have the effect nullify any liens. It would also force the FDIC to declare whether it actually gave power of attorney to the Defendant's servicer to make the assignment in 2014 and participated and aided in the forgery of notes or it is also was defrauded. The Plaintiff presumes that the FDIC and the Government does not willingly and knowingly participate in forging activities and will do the right thing, and its was the making of its errant contractor, Nationwide that provided the forged documents.

See:

*Apex Binding Corp. v. Relkin*, 198 Misc. 381 - NY: Supreme Court 1950:

" As was said by SETTLE, J., in *Royster v. Heck* (29 Ky. L. Rep. 634, 638): "One cannot blow hot and cold; this is a trite expression of the maxim *allegans contraria non est audiendus*; he is not to be heard who alleges things contrary to each other. This fundamental principle is of wide application in the law of equitable estoppel. He can not treat a contract as subsisting, and afterwards avoid it. (Herman on Estoppel, 1039-1049."

Indeed, the question posed by Chancellor KENT, in 1817, applies to this case when he said: "Can he be entitled to credit, when he comes now and declares that he acted the hypocrite in all those transactions? It is one of the maxims of the common law (4 Co. Inst. 299) that *allegans suam turpitudinem non est audiendus.*" (*Underhill v. Van Cortlandt*, 2 Johns. Ch. 339, 350.)"

Even citing one of the oldest known case on estoppel:

"As long ago as 1762, Lord MANSFIELD, in *Montefiori v. Montefiori* (1 Black. W. 363, 364) denied relief in an action where a brother sued another brother to compel the return of a promissory note which the plaintiff had given him for the purpose of creating an impression of defendant's wealth and thus hasten the consummation of a marriage, saying: "The law is, that where, upon proposals of marriage, third persons represent anything material, in a light different from the truth, even though it be by collusion with the husband, they shall be bound to make good the thing in the manner in which they represented it. It shall be, as represented to be."

**COUNT 1  
FRAUD.**

4.1 The allegations of paragraphs 1.1 through 3.570 of this Complaint are hereby re-alleged and incorporated by reference.

4.2 The Defendant by its misrepresentations through its servicer of any entitlement herein rise rising to actual fraud, attempted to defraud the Plaintiff of his money and other parties affected of their property. The Defendant and its servicer knew that the Cynthia Riley-note and the Mykisha Rush-note were fraudulent and that the Defendant had no claim against the property herein.

4.3 Yet, The Defendant through its servicer proceeded anyway. The Defendant failed to speak out when it first had knowledge thereof.

4.4 The Defendant's and its servicer's actions has led to the Plaintiff being assessed unsubstantiated fees and charges, designed to extract additional and substantial profits from the servicing of the mortgage loan the Defendant claimed herein, to the detriment of Plaintiff and other creditors.

4.5 The Defendant and the predecessor to the loan herein, lack standing and capacity.

**B. Lack Of Standing / Failure to Bring Claim in the Name of the Real Party In Interest**

4.3 The allegations in paragraphs 1.1 through 3.570 of this complaint are realleged and incorporated herein by this reference.

4.4 No documentation has been brought by the Defendant that a complete chain of title from the claimed originating lender, WaMuFA, to the the Defendant herein.

4.5 The Defendant must prove that it is the real party in interest as the rightful owner and holder of both the Note and the Mortgage and that it has the legal right to enforce the same; the Defendant failed to meet this burden.

4.6 No valid writing demonstrates that the Creditor named by the Defendant, WaMuFA, and its claimed successor, the Defendant, has an interest in the instant property, Securing such claim is in violation of F.R.B.P. 3001(c)(1) and(2) and is therefore sanctionable in the manner prescribed by F.R.B.P. 3001(c) (2) (D)(i) and (ii)

4.7 There is no apparent chain of transfers to explain how or when the purported the named Creditor by the Defendant, the Defendant itself, and its pre-decessor, WaMuFA, came to allegedly own the Plaintiff's alleged loan.

4.8 A Federal Court cannot have jurisdiction unless a party has constitutional standing. The Defendant fails to provide any credible evidence as to if and when a negotiation of the Note to the named Creditor, WaMuFA or its successor, the Defendant, ever occurred.

4.9 The Creditor named by the Defendant, WaMuFA, nor its successor, the Defendant, is therefore neither a creditor nor the real party in interest and lacks standing make any claims to the instant property.

4.10 Defendants nor the creditor named by it, WaMuFA, or the claimed successor, the Defendant, have constitutional standing to make any claims in the Plaintiff's Chapter 13 case.

4.11 In the bankruptcy courts, procedure is governed by the Federal Rules of Bankruptcy and Civil Procedure. Procedure has an undeniable impact on the issue of who can assert a claim as a holder, because pleading and standing issues which arise in the context of our federal court system. According F.R.Civ. Pro. 17, “[a]n action must be prosecuted in the name of the real party in interest.” (Emphasis added).

4.12 A Proof of Claim are subject to Fed.Rules Bankr. Pro. 7017 which is a restatement of F. R. Civ. P. 17. 4.13 The Plaintiff avers that the real party in interest in a federal action to enforce a note, whether in bankruptcy court or federal district court, is the owner of a note. Because the actual name of the actual note owner is not stated and there is no connection between the creditor named by the Defendant, WaMuFA or its claimed successor, the Defendant, and the copy of the Note provided by the Defendant through its servicer, the Creditor named by the Defendant, WaMuFA, and its alleged successor, the Defendant's very claim is defective.

4.14 The Creditor named by the Defendant, WaMuFA, nor its alleged successor, the Defendant, establishes only that it is neither the holder nor the owner of the note. The named Creditor nor its successor, the Defendant, fails to establish that it has a beneficial interest in the copy of the Note, or that it ever had a beneficial interest in the copy of the Note that was attached to the Defendant's proof of claim in 2015.

4.15 The United States Constitution Article III §2 specifically limits the jurisdiction of the federal courts to “Cases or Controversies.” Justice Powell delivered the Opinion of the Supreme Court in the case of Warth v. Seldin addressing the question of standing in a federal court as follows:

In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of the particular issues. This query involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise. In its constitutional dimension, standing imports justiciability: whether the Plaintiff has made out a —case or controversy— between himself and the Defendants within the meaning of Art.III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the Plaintiff has —alleged such a personal stake in the outcome of the controversy— as to warrant his invocation of federal —court jurisdiction and to justify exercise of the court’s remedial powers on his behalf. Baker v. Carr 369 U.S.186,204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663(1962). The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party...A Federal court’s jurisdiction therefore can be invoked only when the Plaintiff himself has suffered —some threat or actual injury resulting from the putatively illegal action...— Linda R.S. v. Richard D., 410 U.S. 614, 617, 93 S.Ct. 1146,1148, 35 L.Ed.2d 536 (1973). Warth v. Seldin 422U.S.490, 498 (1975).

Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts’ decisional and remedial powers. ... even when the Plaintiff has alleged injury sufficient to meet the —case or

controversy] requirement, this Court has held that the Plaintiff generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties. E.g., *Tileston v. Ullman*, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603 (1943).<sup>1</sup> *Warth v. Seldin* 422U.S.490, 499 (1975) (emphasis added).

4.16 The Plaintiff in the instant case reiterates that a party seeking relief in any Federal Court “bears the burden of demonstrating standing and must plead its components with specificity.” *Coyne v American Tobacco Company*, 183 F.3d 488, 494 (6th Cir. 1999), further *SPOKEO, INC. v. ROBINS* CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT No. 13–1339. Argued November 2, 2015—Decided May 16, 2016. Again, the minimum constitutional requirements for standing are: proof of injury in fact, causation, and redressability. *Valley Forge Christian College v Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982). Furthermore, in order to satisfy the requirements of Article III of the United States Constitution, any claimant asserting rights in a Federal Court must show he has personally suffered some actual injury as a result of the conduct of the adverse party. *Coyne*, 183 F.3d at 494; *Valley Forge*, 454 U.S. at 472.

4.17 As set forth hereinabove, the Creditor named by Defendant, WaMuFA, nor its claimed successor, the Defendant, can make no assertions as to its own interest in the outcome of the instant claim it is making. The named Creditor and it claimed successor further fails to establish any clear, documented, perceived injury to itself.

4.18 The Defendant have not shown that the Creditor named by the Defendant WaMuFA, nor its successor, the Defendant, has any stake in the ownership of the Note and Mortgage as either a holder or owner. Any attempt to indicate the named Creditor or its alleged Successor, as an owner of the Plaintiff’s loan has been by way of fraudulent and misleading documents fabricated by employees of the Defendant or WaMuFA and by persons who lack any personal knowledge as to the Plaintiff’s mortgage loan.

4.19 Defendants must demonstrate how, when and from whom it derived their alleged rights.

4.20 There is a complete lack of any credible explanation describing how, when and from whom the Creditor named by the Defendant, WaMuFA or its claimed successor, the Defendant derived any rights. There is a clear question of fact as to the issue of Defendants’ standing to file a Proof of Claim through its servicer in the Plaintiff’s bankruptcy case.

4.21 In the instant case, the court is left to decipher the legitimacy of any Assignments of Mortgage presented under oath by the Defendant or as the claimed the successor of WaMuFA.

4.22 To the extent the Defendant caused the actions taken by the alleged successor, WaMuFA, it constitutes a gross and willful violation of the Automatic Stay pursuant to 11 U.S.C. section 362(a)(3) by the Defendants.

4.23 As a result of the violation of the automatic stay by its inaction after filing false and fraudulent documents as described herein, the Defendant is liable to the Plaintiff for actual damages, punitive damages and legal fees under 362(k)(1) of the Bankruptcy Code.

## **COUNT II V. CLAIM FOR RELIEF: DECLARATORY JUDGMENT**

5.1 The allegations in paragraphs 1.1 through 3.570 of this complaint are realleged and incorporated herein by this reference.

5.2 At no time relevant to the allegations herein was the Creditor named by the Defendant, WaMuFA, nor its successor, the Defendant, identified as the actual holder and the lawful owner of the mortgage note it claims to be originally signed by the Plaintiff.

5.3 Therefore, the creditor named by Defendant, WaMuFA, nor its alleged successor, the Defendant, has no constitutional standing to file a claim or otherwise participate in this Chapter 13 proceeding.

5.4 Because the named Creditor, WaMuFA, nor the alleged successor, the Defendant, is not the actual holder and lawful owner or assignee of the mortgage, it has no security interest, and thusly no right to seek to collect money from Plaintiff's or their bankruptcy estate.

5.5 As a result thereof, the Defendant should be ordered to pay back to the Chapter 13 Trustee all funds received on the arrearage claim and all funds received from the Plaintiff in the form of direct mortgage payments, pre and post-petition.

5.6 Plaintiff seeks a declaratory judgment holding that the Defendant that neither it, or the creditor named by it, WaMuFA, or its alleged successor, the Defendant, has no enforceable secured or unsecured claim against the property of the estate in bankruptcy;

5.7 the bankruptcy Court declares that the note referred to as the Mykisha Rush-note is genuine and the only ruling note in regard to the instant loan and mortgage.

and 5.8 Plaintiff also seeks a judgment declaring claimed security interest by WaMuFA and the Defendant void pursuant to 11 U.S.C. § 506(d).

**COUNT III**

**VI. CLAIM FOR RELIEF: FRAUD ON THE COURT INCLUDING FALSE AND FRAUDULENT PROOF OF CLAIM**

6.1 The allegations in paragraphs 1.1 through 3.570 of this complaint are re-alleged and incorporated herein by this reference.

6.2 The proof of claim filed by Defendant through its servicer in 2016 is a false and fraudulent claim constituting fraud on the Court, the Chapter 13 Trustee, the Plaintiff and other named creditors for the following reasons:

a. Defendant through its servicer filed the Proof of Claim Number in 2016 which included a copy of a Note the Defendants at all times knew was not payable to the named Creditor, WaMuFA, and which bears no endorsement to the named Creditor, , a fact the Defendant through its servicer knowingly omitted to disclose to the court, the Plaintiff, the Chapter 13 Trustee and the other creditors.

b. Defendant through its servicer filed a Proof of Claim in 2016 which included a copy of a Note, the defective condition of which the Defendants omitted disclose. Specifically, the original note is defective and fails to support the Proof of Claim because in reality, it is not payable to the named Creditor, and it does not bear a bona fide endorsement in blank or a specific endorsement to the named Creditor. The Defendant through its servicer purposefully and knowingly omitted to disclose the material fact of the lack of proper endorsement to the court, the Plaintiff, the Chapter 13 Trustee and the other creditors.

c. Defendant through its servicer filed a Proof of Claim in 2016 which included documents the Defendant through its servicer held out to be assignments of mortgage which at all times the defendant knew to be false fabricated documents manufactured by and signed by agents or parties relating to WaMuFA and the Defendant.

d. Defendant through its servicer filed a Proof of Claim in 2016 which included unsubstantiated fees and charges which the Defendant and it servicer at all times knew to be false and knowingly asserted a claim to collect such false amounts for their own unjust enrichment and monetary gain.

6.3 The Defendant through it servicer knowingly made a false misrepresentation to the court; To Wit, the Defendant agents or parties relating to WaMuFA and the Defendant, which knowingly fabricated assignments of mortgage to present to the court and such act of presenting a false fabricated document was committed for the purpose of enticing the reliance of the Court the Chapter 13 Trustee, the Plaintiff and the other creditors in the bankruptcy case;

. 6.4 The Creditor named by the Defendant, WaMuFA, or its claimed Successor, the Defendant, knowingly made false misrepresentations to the court; To Wit, the Defendant knowingly claimed unsubstantiated monies alleged to be owed by the Plaintiff

and presented the same to the court. Such act was committed for the purpose of enticing the reliance of the Court, the Chapter 13 Trustee, the Plaintiff and the other creditors in the bankruptcy case and for the financial gain of the Defendants;

- . 6.5 The Defendant omitted material, crucial information and facts from the court regarding the Note and Assignment of Mortgage at issue;

To Wit, the Defendant through its servicer knowingly submitted a Note to the Court which is neither indorsed to the Claim and the creditor named by the Defendant, WaMuFA, or its alleged successor, the Defendant, nor is it validly assigned to these parties.

6.6 The Plaintiff has been damaged by the actions and omissions of the named Creditor, WaMuFA, its alleged successor, the Defendant;

To Wit, in that he has been and continues to be forced to expend his time and expenses toward the defense of this contested matter to protect his rights.

6.7 All parties of interest in the Plaintiff bankruptcy case are harmed by the actions and omissions of the named Creditor, WaMuFA, its alleged successor, the Defendant;

To Wit, in that the integrity of the judicial process relied upon has been compromised by the fraudulent acts, fraudulent documents and omissions of the Defendant.

6.8 This Court has authority under 11 U.S.C. § 105(a) to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 6.9 The Court should impose sanctions on the Defendant for fraud as the defendant have filed false documents to support an improper claim regarding the Debtor herein. Plaintiff therefore request that Court invoke the powers granted to it by 11 U.S.C. § 105(1) and issue such order, process or judgment necessary to address the fraud of the Defendants and to prevent any future fraud or abuse of process. In the alternative, the Plaintiff requests this Court to waive the pre-notice time requirements of Rule 9011 of the Bankruptcy Rules and to impose sanctions under that Rule.

WHEREFORE, Plaintiff prays:

A. That the Court disallow, expunge and strike any claim by the Creditor named by the Defendant, WaMuFA, and its alleged successor, the Defendant.

B. That the Court direct the Chapter 13 Trustee to any claim or proof of claim advanced by the aforementioned parties.

- C. That WaMuFA and the alleged successor, the Defendant, be precluded from filing any amended, modified, or substitute claim in this case;
- D. That the alleged arrearages contained in the Proof of Claim be cancelled and forever discharged;
- E. That Claimant be required to pay legal fees and expenses to any attorney for Plaintiff;
- F. That the Claimant provide a complete accounting of the Plaintiff's mortgage loan account, forthwith;
- G. That the Defendant's claimed security interest be declared void pursuant to 11 U.S.C. § 506(d); H. That the Defendant be sanctioned pursuant to 11 U.S.C. 362(k) for allowing the alleged successor, the Defendant, to violate the automatic stay;
- I. That the Defendant be precluded from presenting any omitted information, in any form, consistent with the sanctions provided by F.R.B.P. 3001(c)(2)(D)(i);
- J. That the Plaintiff be awarded other appropriate relief , including reasonable expenses and attorney's fees consistent with the sanctions provided by F.R.B.P. 3001(c)(2)(D)(ii);
- K. That Plaintiff have such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff prays that the Court grant the relief requested herein.

This the 11th Day of July, 2017

RESPECTFULLY SUBMITTED, /S/ Richard Holt, acting pro se

Mailing address:  
244 Fifth Avenue, #2031  
New York NY 10001

Phone: 203-434-1455



**EXHIBIT "A"**

# Washington Mutual

**ADJUSTABLE RATE NOTE  
(FHLB Index - Payment and Rate Caps)**

1059-0

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125% OF THE ORIGINAL AMOUNT (OR \$ 385,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

NEWTOWN \_\_\_\_\_ Connecticut \_\_\_\_\_  
(City) (State)

March 22, 2000

23 RIDGEWOOD DRIVE, NORWALK, CT 06853

(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 308,000.00 plus any amounts added in accordance with Section 4 (G) below, (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Washington Mutual Bank, FA. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount has been paid. I will pay interest at a yearly rate of 4.950 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month. In this Note, "payments" refer to principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on 1st day of each month beginning on May, 2000. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 1, 2030, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at 9451 CORBIN AVE. NORTHRIDGE, CA 91324,

, or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,644.01, unless adjusted at an earlier time under section 4(H) of this Note.

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**(C) Payment Changes**

My monthly payment will be recomputed, according to Sections 4(E)(F)(G)(H) and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Interest Rate Change Dates**

The interest rate I will pay may further change on the 1st day of May, 2000, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the monthly weighted average cost of funds for Eleventh District savings institutions as announced by the Federal Home Loan Bank of San Francisco (the "11th District Monthly Weighted Average Cost of Funds Index"). The most recent Index figure available on each interest rate Change Date is called the "Current Index".

Information on the 11th District Monthly Weighted Average Cost of Funds Index may be obtained by writing to the Federal Home Loan Bank at P.O. Box 7948, San Francisco, California 94120, Attention: Public Information Department; or by calling the Federal Home Loan Bank at 1-415-616-2600.

If the Index is no longer available, the Note Holder will use the new Index as if it were the Index. The new Index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (G.13)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recent available twelve months and dividing by 12. This information may be available in your library, or you may write to the Board of Governors, Publication Services Washington D.C. 20551. The most recent figure available 15 days prior to each Interest Rate Change Date will be the Current Index. If the new Index is no longer available, the Note Holder will choose an alternate Index which is based upon information comparable to the new Index. The Note Holder will give me notice as to this choice.

**(C) Interest Rate Change Calculation**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Three & One-Tenth percentage points 3.100 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. If a new Index is selected, the new Margin will be the difference between the average of the Index for the most recent three year period which ends on the last date the Index was available plus the then effective Margin and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). If an alternate Index is selected, the new Margin will be the difference between the average of the new Index for the most recent three year period which ends on that last date the new Index was available plus the then effective Margin and the average of the alternate Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). In either case, this difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than Eleven & Ninety-Five-Hundredths percentage points 11.950 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

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**(E) Payment Change Dates**

Effective every year commencing May 1, 2001,

and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying.

**(G) Changes In My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to 125% of the principal amount original borrowed. In the event my unpaid principal would otherwise exceed that 125% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the fifth anniversary of the due date of the first monthly payment, and on that same day every fifth year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal.

**5. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without payment of any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of reducing the amount of my monthly payments, but only after

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the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**Miscellaneous Fees:** I understand that the Note Holder will also charge a return item charge in the event a payment that I make in connection with repayment of this loan is not honored by the financial institution on which it is drawn. The current fee is \$10.00. Lender reserves the right to change the fee from time to time without notice except as may be required by law.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once of each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will specify a date, not less than 30 days from the date the notice is given the Borrower).

**(D) No Waiver By Note Holder**

Even If, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

59-0

**10. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**11. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.**

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) the request to assume is made after one year following recordation of the Security Instrument, (b) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (c) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (e) payment of Assumption Fee if requested by Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**12. MISCELLANEOUS PROVISIONS**

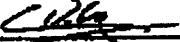
In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

59-0

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

  
X \_\_\_\_\_  
RICHARD HOLT

Pay to the order of  
Without Recourse  
WASHINGTON MUTUAL BANK, FA  
By   
CYNTHIA RILEY  
VICE PRESIDENT



**NOTE ADDENDUM  
Borrower's Payments Before They are Due  
(Prepayment Fee Clause)**

6059-0

This Note Addendum is made this 22nd day of March, 2000 and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned (the "Borrower") in favor of Washington Mutual Bank, FA (the "Lender") and dated as of even date herewith (the "Note").

This Note Addendum amends the provision in the Note regarding the Borrower's right to prepay as follows:

**BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal before they are due. Any payment of principal only is known as a "prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

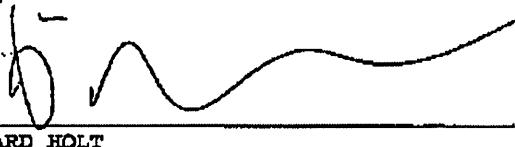
If I make a full prepayment at any time during the first Three years of the loan, I may be charged a fee as follows:

If Noteholder receives a prepayment on or before the first anniversary of the date of the first payment due date of the Note, the Prepayment Fee shall be equal to Three percent (3.000 %) of the original loan amount. If Noteholder receives prepayment after the first anniversary but on or before the Second anniversary of the first payment due date of the Note, the prepayment fee shall be Two percent (2.000 %) of the original loan amount. If Noteholder receives prepayment after the second anniversary but on or before the Third anniversary of the first payment due date of the Note, the prepayment fee shall be One percent (1.000 %) of the original loan amount. Thereafter, prepayment of the Note shall be permitted without any Prepayment Fee.

The Prepayment Fee shall be payable upon a full prepayment, voluntary or involuntary, including but not limited to a prepayment resulting from Noteholder's permitted acceleration of the balance due on the Note. Notwithstanding the foregoing, nothing herein shall restrict my right to prepay at anytime without penalty accrued but unpaid interest that has been added to Principal.

When I make a full or partial prepayment I will notify the Noteholder in writing that I am doing so. Any partial prepayment of principal shall be applied to interest accrued on the amount prepaid and then to the principal balance of the Note which shall not reduce the amount of monthly installments of principal and interest (until reamortized as set forth in the Note at the next Payment Change Date) nor relieve me of the obligation to make the installments each and every month until the Note is paid in full. Partial prepayments shall have no effect upon the due dates or the amounts of my monthly payments unless the Noteholder agrees in writing to such changes.

By signing below, borrower accepts and agrees to the terms and covenants contained in this Note Addendum.

X   
RICHARD HOLT

**EXHIBIT "B"**



**ADJUSTABLE RATE NOTE  
(FHLB Index - Payment and Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125% OF THE ORIGINAL AMOUNT (OR \$ 385,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

NEWTOWN \_\_\_\_\_ Connecticut  
(City) (State)

March 22, 2000

23 RIDGEWOOD DRIVE, NORWALK, CT 06853

(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 308,000.00 plus any amounts added in accordance with Section 4 (G) below, (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Washington Mutual Bank, FA. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount has been paid. I will pay interest at a yearly rate of 4.950 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month. In this Note, "payments" refer to principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on 1st day of each month beginning on May, 2000, I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 1, 2030, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at 9451 CORBIN AVE. NORTHRIDGE, CA 91324,

, or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,644.01, unless adjusted at an earlier time under section 4(H) of this Note.

**(C) Payment Changes**

My monthly payment will be recomputed, according to Sections 4(E)(F)(G)(H) and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES****(A) Interest Rate Change Dates**

The interest rate I will pay may further change on the 1st day of May, 2000, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the monthly weighted average cost of funds for Eleventh District savings institutions as announced by the Federal Home Loan Bank of San Francisco (the "11th District Monthly Weighted Average Cost of Funds Index"). The most recent index figure available on each interest rate Change Date is called the "Current Index".

Information on the 11th District Monthly Weighted Average Cost of Funds Index may be obtained by writing to the Federal Home Loan Bank at P.O. Box 7848, San Francisco, California 94120, Attention: Public Information Department; or by calling the Federal Home Loan Bank at 1-415-816-2600.

If the Index is no longer available, the Note Holder will use the new index as if it were the Index. The new Index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (G.13)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recent available twelve months and dividing by 12. This information may be available in your library, or you may write to the Board of Governors, Publication Services Washington D.C. 20551. The most recent figure available 15 days prior to each Interest Rate Change Date will be the Current Index. If the new Index is no longer available, the Note Holder will choose an alternate index which is based upon information comparable to the new Index. The Note Holder will give me notice as to this choice.

**(C) Interest Rate Change Calculation**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Three & One-Tenth percentage points 3.100 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new index is selected, pursuant to paragraph 4(B), a new Margin will be determined. If a new index is selected, the new Margin will be the difference between the average of the index for the most recent three year period which ends on the last date the index was available plus the then effective Margin and the average of the new index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). If an alternate index is selected, the new Margin will be the difference between the average of the new index for the most recent three year period which ends on that last date the new index was available plus the then effective Margin and the average of the alternate index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). In either case, this difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than Eleven & Ninety-Five-Hundredths percentage points 11.950 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

**(E) Payment Change Dates**

Effective every year commencing May 1, 2001, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to 125% of the principal amount original borrowed. In the event my unpaid principal would otherwise exceed that 125% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the fifth anniversary of the due date of the first monthly payment, and on that same day every fifth year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal.

**5. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without payment of any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of reducing the amount of my monthly payments, but only after

the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

#### 6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

Miscellaneous Fees: I understand that the Note Holder will also charge a return item charge in the event a payment that I make in connection with repayment of this loan is not honored by the financial institution on which it is drawn. The current fee is \$10.00. Lender reserves the right to change the fee from time to time without notice except as may be required by law.

#### 7. BORROWER'S FAILURE TO PAY AS REQUIRED

##### (A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be .5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once of each late payment.

##### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

##### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will specify a date, not less than 30 days from the date the notice is given the Borrower).

##### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

##### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### 8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

#### 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**10. WAIVERS**

I and any other person who . . . obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

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**Transfer of the Property or a Beneficial Interest in Borrower.**

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) the request to assume is made after one year following recordation of the Security Instrument, (b) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (c) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (e) payment of Assumption Fee if requested by Lender.

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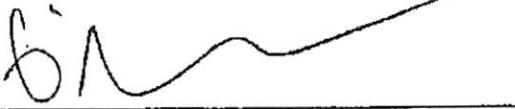
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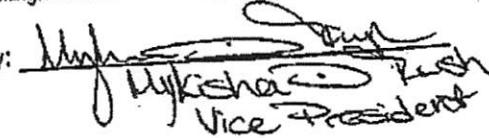
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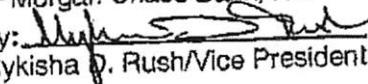
If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

[Redacted]  
WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

X   
RICHARD HOLT

Pay to the Order of: JPMorgan Chase Bank, N.A.  
Without Recourse  
JPMORGAN CHASE BANK, N.A. successor in interest  
by purchase from the FDIC, as receiver for  
Washington Mutual Bank formerly Washington Mutual Bank, FA

By:   
Mykisha D. Rush  
Vice President

Pay to the Order of:  
Without Recourse  
JPMorgan Chase Bank, N.A.  
By:   
Mykisha D. Rush/Vice President

**NOTE ADDENDUM****Borrower's Payments Before They are Due  
(Prepayment Fee Clause)**

This Note Addendum is made this 22nd day of March, 2000 and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned (the "Borrower") in favor of Washington Mutual Bank, FA (the "Lender") and dated as of even date herewith (the "Note").

This Note Addendum amends the provision in the Note regarding the Borrower's right to prepay as follows:

**BORROWER'S RIGHT TO PREPAY**

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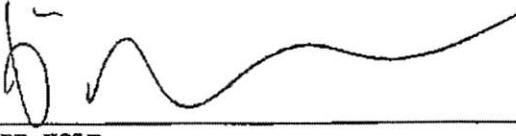
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If Noteholder receives a prepayment on or before the first anniversary of the date of the first payment due date of the Note, the Prepayment Fee shall be equal to Three percent (3.000 %) of the original loan amount. If Noteholder receives prepayment after the first anniversary but on or before the Second anniversary of the first payment due date of the Note, the prepayment fee shall be Two percent (2.000 %) of the original loan amount. If Noteholder receives prepayment after the second anniversary but on or before the Third anniversary of the first payment due date of the Note, the prepayment fee shall be One percent (1.000 %) of the original loan amount. Thereafter, prepayment of the Note shall be permitted without any Prepayment Fee.

The Prepayment Fee shall be payable upon a full prepayment, voluntary or involuntary, including but not limited to a prepayment resulting from Noteholder's permitted acceleration of the balance due on the Note. Notwithstanding the foregoing, nothing herein shall restrict my right to prepay at anytime without penalty accrued but unpaid interest that has been added to Principal.

When I make a full or partial prepayment I will notify the Noteholder in writing that I am doing so. Any partial prepayment of principal shall be applied to interest accrued on the amount prepaid and then to the principal balance of the Note which shall not reduce the amount of monthly installments of principal and interest (until reamortized as set forth in the Note at the next Payment Change Date) nor relieve me of the obligation to make the installments each and every month until the Note is paid in full. Partial prepayments shall have no effect upon the due dates or the amounts of my monthly payments unless the Noteholder agrees in writing to such changes.

By signing below, borrower accepts and agrees to the terms and covenants contained in this Note Addendum.

X   
RICHARD HOLT

**EXHIBIT "C"**

**DOCKET NO: CV 02 0192482 S : SUPERIOR COURT**  
**WASHINGTON MUTUAL BANK, FA : JUDICIAL DISTRICT OF STAMFORD/NORWALK**  
**VS. : AT STAMFORD**  
**RICHARD L. HOLT, ET AL : JULY 11, 2003**

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

**STATE OF Florida : ss. July 11, 2003**  
**COUNTY OF Duval :**

The undersigned, being duly sworn, hereby deposes and says as follows:

1. I am over the age of 18 years and understand the meaning and obligation of an oath. I am employed as a/an Vice President with the Plaintiff, Washington Mutual Bank, FA. In my capacity as a Vice President I am personally familiar with and have personal knowledge of the books and records of the Plaintiff, as they apply to the account of the Defendants, Richard L. Holt and Dorsum Nemus, LLC, including but not limited to payment histories, loan histories, servicing records, and default notices. The books and records of the Plaintiff are kept in the ordinary course of business and said books and records were made at or about the time described.

2. On March 22, 2000, the Defendants, Richard L. Holt individually and on behalf of Dorsum Nemus, LLC, executed and delivered to Washington Mutual Bank, FA a Note in the original principal amount of \$308,000.00, and agreed to make payments

pursuant to the terms of said Note. A true and accurate copy of the Note is attached as Exhibit A.

3. On March 22, 2000, the Defendants, Richard L. Holt individually and on behalf of Dorsum Nenius, LLC, conveyed by Mortgage Deed their interest in that certain piece or parcel of real property known as 23 Ridgewood Drive, Norwalk, Connecticut, to Washington Mutual Bank, FA. The Mortgage was recorded on March 27, 2000 in Volume 3876 at Page 250 of the Norwalk Land Records. A true and accurate copy of the Mortgage is attached hereto as Exhibit B.

4. Pursuant to the terms of the Note and Mortgage the Defendant were to make principal and interest payments on the 1<sup>st</sup> day of each month beginning on May 1, 2000, and each and every month thereafter until April 1, 2030.

5. The Defendants have failed, refused and neglected to make monthly mortgage payments as required by the loan documents since the payment due for April 1, 2002, and for each and every month thereafter.

6. The Defendants are in default under the loan documents for failure to make payments as required by the terms of the Note and Mortgage.

7. The Defendants were duly notified in writing on at least five occasions, by the Plaintiff in accordance with the terms of the Note and Mortgage of the default and that the failure to cure the default may result in acceleration of the debt. The Defendants have failed, refused and neglected to cure the default. A true and accurate copy of the default letters is attached hereto as composite Exhibit C.

8. Thereafter the Note was accelerated and the remaining unpaid principal balance, plus interest, attorney's fees and costs are due and owing to the Plaintiff.

9. Based upon my review of the books and records of this account, the following sums are due and owing from the Defendants to the Plaintiff:

Principal Balance	\$ 315,654.00
Interest from 3/1/02 to 6/30/03 @ 5.48% APR	\$ 23,900.48
Pre-Acceleration Late Charges	\$ 94.99
Escrow Advances	\$ 28,794.08
Other Misc.	\$ 68.40
<b>TOTAL:</b>	<b>\$ 368,511.95</b>

10. The Per Diem rate of interest after 6/30/03 is \$ 45.92.

11. Plaintiff is not seeking payments due for May, 2001, July, 2001 or February, 2002 as they have already been posted.

12. Plaintiff afforded the Defendants the opportunity to bring their April, 2002 payment current, however the Defendants failed neglected and refused to tender funds for the April, 2002 payment until a tender in November, 2002, which was properly rejected in accordance with the Note and Mortgage, as further and additional amounts were required since April, 2002 to bring the loan current.

13. In accordance with the Note and Mortgage, the Plaintiff is not required to accept insufficient funds or partial payments from the Defendants where such tendered amounts fail to bring the loan current and the Defendants have defaulted.

I hereby swear and state that the foregoing facts are true and accurate to the best of my knowledge and belief.

Subscribed and sworn to me this 11th day of July, 2003.

WASHINGTON MUTUAL BANK, PA.

By: Melissa Rohr  
Re: Vice President

STATE OF Florida

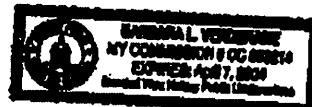
COUNTY OF Duval } SS: \_\_\_\_\_

Subscribed and sworn to before me on this 11 day of July, 2003, before me, the undersigned officer, personally appeared, Melissa Rohr, who acknowledged himself/herself to be the Vice President of the Plaintiff, Washington Mutual Bank, FA, and that s/he, as such officer, being authorized to do, executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his/her free act and deed individually and as such officer, and the free act and deed of the corporation.

I WITNESS THEREON horizonto set my hand.

Notary Public  
My Commission Expires: \_\_\_\_\_

Loan #9035960590



14. The Defendants have failed, neglected and refused to tender sufficient funds to bring the loan current since their default in April, 2002.
15. The Plaintiff has never entered into any forbearance agreement with the Defendants.
16. Plaintiff is the owner and holder of the Note and Mortgage.
17. Plaintiff has been forced to incur attorney's fees and costs to collect this indebtedness.
18. Plaintiff has satisfied any and all conditions precedent to enforcing this instrument.
19. There are no setoffs or counterclaims to the indebtedness due and owing in this matter.
20. I submit this Affidavit in support of the Plaintiff's Motion for Summary Judgment.

Washington Mutual

NOTE

ADJUSTABLE RATE NOTE  
(FHLB Index - Payment and Retirement)

BEST AVAILABLE DOCUMENT

055-6

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125% OF THE ORIGINAL AMOUNT (OR \$ 388,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

NEW YORK \_\_\_\_\_ County \_\_\_\_\_  
(City) \_\_\_\_\_ County (State) \_\_\_\_\_

March 22, 2000

33 RIDGEWOOD DELUXE, NORWALK, CT 06853

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 388,000.00, plus any amounts added in accordance with Section 4 (G) below, (this amount is called "principal") plus interest, to the order of the Lender, The City Savings & Loan Association, Washington Mutual Bank, PA. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

2. INTEREST

Interest will be charged on unpaid principal until the full amount has been paid. I will pay interest at a yearly rate of 6.250 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. In this Note, "payments" refer to principal and interest payments only. Although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on 1st day of each month beginning on May 1, 2000. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 1, 2030, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at 3451 CORBIN AVE., RIVERSIDE, CA 92524, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 3,544.61, unless adjusted at an earlier time under section 4(H) of this Note.

30745-000-00

Page 1 of 6

EXHIBIT A

(C) Payment Changes  
My monthly payment will be recomputed, according to Sections 4(E)-(F)-(G)(H) and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.  
4. INTEREST RATE AND MONTHLY PAYMENT CHANGES  
(A) Interest Rate Changes  
The interest rate I will pay may further change on the 1st day of May, 2000, and on that day every month thereafter. Each day of my interest rate could change is called a "Change Date".  
Beginning with the first Change Date, my interest rate will be based on an index, "Index", is the monthly weighted cost of funds for Eleventh District Savings Institutions as announced by the Federal Home Loan Bank of San Francisco (the "Eleventh District Savings Institutions" is called the "Current Index"). The most recent index figure available on each interest rate Change Date is called the "Current Index".  
Information on the 11th District Monthly Weighted Cost of Funds Index may be obtained by writing to the 11th District Mortgagelender Rates (G), 13, (the "Monthly Yield"). The Federal Reserve Statistical Release entitled "Selected Interest Rates" (G, Box 7940, San Francisco, California 94120). Attention: Public Information Department; or by calling the Federal Home Loan Bank at 1-415-616-2600.  
If the index is no longer available, the Note Holder will use the new index as if it were the index. The new index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates" (G, 13) (the "Monthly Yield"). The Federal Reserve Statistical Release is determined by adding together the monthly yields for the most recent twelve months and dividing by 12. This information may be available in your library, or you may write to the Board of Governors, Public Information Services Washington D.C., 20551. The most recent figure available 15 days prior to each interest rate Change Date will be the current index. If the new index is no longer available, the Note Holder will choose an alternate index which is based upon information comparable to the new index. The Note Holder will give me notice as to this choice.  
(C) Interest Rate Change Calculation  
Before each Change Date, the Note Holder will calculate my new interest rate by adding three to the current index. The Note Holder will give me notice as to this choice.  
Three to One-Tenth  
Before each Change Date, the Note Holder will calculate my new interest rate by adding three to the current index. The Note Holder will pursue to pay graph 4(B), a new margin will be determined in Section (D) below, this rounded amount will be my new interest rate until the limits stated in Section (D) are reached, this rounded amount will be my new interest rate for the next 4(D) days.  
Interest on-thousandth of one percentage point (0.001%). Subject to the limits stated in Section (D) below, this rounded amount will be my new interest rate until the limits stated in Section (D) below, this rounded amount will be my new interest rate for the next 4(D) days.  
("Margin") to the Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section (D) below, this rounded amount will be my new interest rate for the next 4(D) days.  
("Margin") to the Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage points 3.100 %

(B) The Index  
If the index is no longer available, the Note Holder will use the new index as if it were the index. The new index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates" (G, Box 7940, San Francisco, California 94120). Attention: Public Information Department; or by calling the Federal Home Loan Bank at 1-415-616-2600.  
Information on the 11th District Monthly Weighted Cost of Funds Index may be obtained by writing to the 11th District Mortgagelender Rates (G), 13, (the "Monthly Yield"). The Federal Home Loan Bank of San Francisco (the "Eleventh District Savings Institutions" is called the "Current Index"). The most recent index figure available on each interest rate Change Date is called the "Current Index".  
Beginning with the first Change Date, my interest rate will be based on an index, "Index", is the monthly weighted cost of funds for Eleventh District Savings Institutions as announced by the Federal Home Loan Bank of San Francisco (the "Eleventh District Savings Institutions" is called the "Current Index"). The most recent index figure available on each interest rate Change Date is called the "Current Index".  
The interest rate could change is called a "Change Date".  
Interest rate could change is called a "Change Date".  
May, 2000  
The interest rate I will pay may further change on the 1st day of

6059-0

**(E) Payment Change Dates**

Effective every year commencing May 1, 2001

and on

the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to 125% of the principal amount original borrowed. In the event my unpaid principal would otherwise exceed that 125% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the fifth anniversary of the due date of the first monthly payment, and on that same day every fifth year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal.

**5. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without payment of any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of reducing the amount of my monthly payments, but only after

[REDACTED] 5059-0

the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**Miscellaneous Fees:** I understand that the Note Holder will also charge a return item charge in the event a payment that I make in connection with repayment of this loan is not honored by the financial institution on which it is drawn. The current fee is \$10.00. Lender reserves the right to change the fee from time to time without notice except as may be required by law.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charges for Overdue Payments**  
If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once of each late payment.

**(B) Default**  
If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**  
If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will specify a date, not less than 30 days from the date the notice is given the Borrower).

**(D) No Waiver By Note Holder**  
Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**  
If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**10. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**11. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.**  
If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) the request to assume is made after one year following recordation of the Security Instrument, (b) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (c) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (e) payment of Assumption Fee if requested by Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

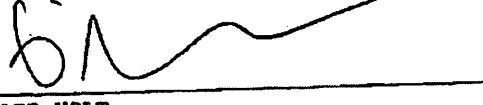
**12. MISCELLANEOUS PROVISIONS**

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

[REDACTED] 6059-0

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

X   
RICHARD HOLT



**NOTE ADDENDUM**  
**Borrower's Payments Before They are Due**  
**(Prepayment Fee Clause)**

6059-0

This Note Addendum is made this 22nd day of March, 2000 and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned (the "Borrower") in favor of Washington Mutual Bank, FA

(the "Lender") and dated as of even date herewith (the "Note"). This Note Addendum amends the provision in the Note regarding the Borrower's right to prepay as follows:

**BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal before they are due. Any payment of principal only is known as a "prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

If I make a full prepayment at any time during the first Three years of the loan, I may be charged a fee as follows:

If Noteholder receives a prepayment on or before the first anniversary of the date of the first payment due date of the Note, the Prepayment Fee shall be equal to Three percent (3.000 %) of the original loan amount. If Noteholder receives prepayment after the first anniversary but on or before the Second anniversary of the first payment due date of the Note, the prepayment fee shall be Two percent (2.000 %) of the original loan amount. If Noteholder receives prepayment after the second anniversary but on or before the Third anniversary of the first payment due date of the Note, the prepayment fee shall be One percent (1.000 %) of the original loan amount. Thereafter, prepayment of the Note shall be permitted without any Prepayment Fee.

The Prepayment Fee shall be payable upon a full prepayment, voluntary or involuntary, including but not limited to a prepayment resulting from Noteholder's permitted acceleration of the balance due on the Note. Notwithstanding the foregoing, nothing herein shall restrict my right to prepay at anytime without penalty accrued but unpaid interest that has been added to Principal.

When I make a full or partial prepayment I will notify the Noteholder in writing that I am doing so. Any partial prepayment of principal shall be applied to interest accrued on the amount prepaid and then to the principal balance of the Note which shall not reduce the amount of monthly installments of principal and interest (until reamortized as set forth in the Note at the next Payment Change Date) nor relieve me of the obligation to make the installments each and every month until the Note is paid in full. Partial prepayments shall have no effect upon the due dates or the amounts of my monthly payments unless the Noteholder agrees in writing to such changes.

By signing below, borrower accepts and agrees to the terms and covenants contained in this Note Addendum.

X   
RICHARD HOLT

**EXHIBIT "D"**

Pg 52 of 217

**SUMMONS - CIVIL**

(Except Family Actions)

JD-CV-1 Rev. 6-97

C.G.S. §51-346, 51-347, 51-349, 51-350, 52-45a

52-48, 52-259, P.B. Sec. 49, 63, 66

**STATE OF CONNECTICUT  
SUPERIOR COURT****INSTRUCTIONS**

1. Type or print legibly; sign original summons and conform all copies of the summons.
2. Prepare or photocopy conformed summons for each defendant.
3. Attach the original summons to the original complaint, and attach a copy of the summons to each copy of the complaint. Also, if there are more than 2 plaintiffs or 4 defendants prepare form JD-CV-2 and attach it to the original and all copies of the complaint.
4. After service has been made by officer, file original papers and officer's return with the clerk of court.
5. The party recognized to pay costs must appear personally before the authority taking the recognition.
6. Do not use this form for actions in which an attachment, garnishment or replevy is being sought. See Practice Book Section 49 for other exceptions.

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

**"X" ONE OF THE FOLLOWING**

Amount, legal interest or property in demand, exclusive of interest and costs is:

less than \$2,500  
 \$2,500 through \$14,999.99  
 \$15,000 or more  
 ("X" if applicable)  
 Claiming other relief in  
 addition to or in lieu of money or damages.

RETURN DATE (mo., day, yr.)  
 November 19, 2002

<input checked="" type="checkbox"/> JUDICIAL DISTRICT	AT (Town in which writ is returnable)(C.G.S. 51-346, 51-349)	CASE TYPE (From case type list see back)		
<input type="checkbox"/> HOUSING SESSION <input type="checkbox"/> GA NO. _____	Stamford-Norwalk at Stamford	Major	P	Minor 00

ADDRESS OF COURT CLERK WHERE WRIT AND OTHER PAPERS SHALL BE FILED (No. street, town and zip code)(C.G.S. 51-347, 51-350) 123 Hoyt Street, P. O. Box 3245, Ridgeway Station, Stamford, CT 06905	TELEPHONE NUMBER (203) 965-5307
---	------------------------------------

PARTIES	NAME AND ADDRESS OF EACH PARTY (No., street, town and zip code)	NOTE: Individual's Names Last, First, Middle Initial	<input type="checkbox"/> Form JD-CV2 attached	PTY NO
FIRST NAMED PLAINTIFF	Washington Mutual Bank, FA, 9451 Corbin Avenue, N010204, Northridge, CA 91324			01
Additional Plaintiff				02
FIRST NAMED DEFENDANT	Holt, Richard L., 23 Ridgewood Road, Norwalk, CT 06853			50
Additional Defendant	Dorsum Nemus Limited Liability Company, c/o Richard L. Holt, 23 Ridgewood Drive, Norwalk, CT 06854			51
Additional Defendant				52
Additional Defendant				53

**NOTICE TO EACH DEFENDANT**

1. You are being sued.
2. This paper is a Summons in a lawsuit.
3. The Complaint attached to these papers states the claims that each Plaintiff is making against you in this lawsuit.
4. To respond to this Summons, or to be informed of further proceedings, you or your attorney must file a form called an "Appearance" with the Clerk of the above-named Court at the above Court address on or before the second day after the above Return Date.
5. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default.
6. The "Appearance" form may be obtained at the above Court address.
7. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately take the Summons and Complaint to your insurance representative.
- B. If you have questions about the Summons and Complaint you should consult an attorney promptly. The Clerk of Court is not permitted to give advice on legal questions.

DATE October 29, 2002	SIGNED (Sign and print proper box)	<input checked="" type="checkbox"/> Comm. of Superior Court <input type="checkbox"/> Assistant Clerk	TYPE NAME OF PERSON SIGNING AT LEFT. Geoffrey K. Milne	
--------------------------	------------------------------------	---	---	--

**FOR THE PLAINTIFF(S) PLEASE ENTER THE APPEARANCE OF:**

NAME AND ADDRESS OF ATTORNEY, LAW FIRM OR PLAINTIFF IF PRO SE (No. street, town and zip code) Hunt Leibert Chester & Jacobson, PC, 94 Hungerford St., Hartford, CT 06106	TELEPHONE NO. (860) 246-5889	JURIS NO. (If atty or law firm) 101589
---	---------------------------------	---

NAME AND RESIDENCE OF PERSON RECOGNIZED TO PROSECUTE IN THE AMOUNT OF \$250 (No. street, town and zip) Patricia Krupa of 94 Hungerford Street, Hartford, CT 06106	SIGNATURE OF PLAINTIFF IF PRO SE
--	----------------------------------

# PLFS. # DEF'S. # CNTS. SIGNED (Officer taking recognition: X proper box)	<input checked="" type="checkbox"/> Comm. of Superior Court <input type="checkbox"/> Assistant Clerk	For Court Use Only
1 2 1		FILE DATE

**IF THIS SUMMONS IS SIGNED BY A CLERK:**

- a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service thereof.

ATTEST:  
 A TRUE COPY  
 ALBERT W. CALIENDO  
 STATE MARSHAL, FAIRFIELD COUNTY

I hereby certify I have read and understand the above:	SIGNED (Pro Se Plaintiff)	DATE SIGNED	DOCKET NO.
--	---------------------------	-------------	------------

JD-CV-1.DOC File No.	ORIGINAL
-------------------------	----------

<b>RETURN DATE:</b> November 19, 2002	:	<b>SUPERIOR COURT</b>
<b>WASHINGTON MUTUAL BANK, FA</b>	:	<b>JUDICIAL DISTRICT OF STAMFORD-NORWALK</b>
<b>VS:</b>	:	<b>AT STAMFORD</b>
<b>RICHARD L. HOLT AND DORSUM NEMUS LIMITED LIABILITY COMPANY</b>	:	<b>October 29, 2002</b>

COMPLAINT

1. Plaintiff, Washington Mutual Bank, FA (hereinafter referred to as "Washington Mutual") is a corporation organized and existing under the laws of California with an address of 9451 Corbin Avenue N010204, Northridge, California 91324.
2. At all times complained of herein, the Defendant, Dorsum Nemus Limited Liability Company, owned real property situated in the Town of Norwalk, County of Fairfield and State of Connecticut known as 23 Ridgewood Drive, (hereinafter the "Property") being more particularly described in Schedule A attached hereto and made a part hereof.
3. On or about March 22, 2000, the Defendants, Richard L. Holt individually and on behalf of Dorsum Nemus Limited Liability Company, executed and delivered to Washington Mutual Bank, FA, a Note (the "Note") for a loan in the original principal amount of \$308,000.00.
4. On said date to secure said Note the Defendants, Richard L. Holt individually and on behalf of Dorsum Nemus Limited Liability Company, did execute and deliver to Washington Mutual Bank, FA, a Mortgage on the Property, a copy of which is attached hereto as Exhibit A. Said Mortgage was dated March 22, 2000 and recorded March 27, 2000 in Volume 3876 at Page 250 of the Norwalk Land

Records. The Plaintiff, Washington Mutual Bank, FA, is the owner and holder of said Note and Mortgage.

5. Said Note is in default and the Plaintiff, Washington Mutual as the owner and holder of said Mortgage and Note has elected to accelerate the balance due on said Note, to declare said Note to be due in full and to foreclose the Mortgage securing said Note.

6. The Plaintiff has provided written notice in accordance with the Note and Mortgage to the Defendants of the default under the Note and Mortgage, but said Defendants have failed and neglected to cure the default. The Plaintiff has elected to accelerate the balance due on said Note, to declare said Note to be due in full and to foreclose the Mortgage securing said Note.

7. The following liens or encumbrances claim to have an interest in the Property which liens or encumbrances are prior in right to the Mortgage herein:

a. The Town of Norwalk may claim an interest in the Property by virtue of inchoate liens for real estate taxes on the Grand Lists of October 1, 2001 and October 1, 2002.

8. There are no liens or encumbrances which claim to have an interest in the Property which liens or encumbrances are subsequent in right to the Mortgage herein.

9. The Defendant Dorsum Nemus Limited Liability Company, is the owner of the equity of redemption of the Property and, on information and belief, is in possession of the Property.

10. The Plaintiff, Washington Mutual, has further caused a Lis Pendens to be filed on the Land Records of the Town of Norwalk and has further caused a copy of said Lis Pendens to be served on the Defendants, Richard L. Holt and Dorsum Nemus Limited Liability Company. A copy of said Lis Pendens is attached hereto as Exhibit B.

11. The Plaintiff, Washington Mutual, has further caused a notice to be given to the Defendants, Richard L. Holt and Dorsum Nemus Limited Liability Company, of their rights pursuant to the Statutes pertaining to unemployment and underemployment by annexing to this Writ, Summons and Complaint a copy of the notice provided for in said Statute.

WHEREFORE, the plaintiff claims:

1. Foreclosure of the Mortgage;
2. Possession of the Property;
3. Money damages against the makers of, or obligors on, the Note described herein and/or their Estates, if deceased, (unless same has been precluded by virtue of a Bankruptcy filing);
4. A reasonable attorney's fee (unless same has been precluded by virtue of a Bankruptcy filing);
5. Interest (unless same has been precluded by virtue of a Bankruptcy filing);
6. Costs of suit (unless same has been precluded by virtue of a Bankruptcy filing);
7. Deficiency Judgment against the makers of, or obligors on, the Note described herein, and/or their Estate, if deceased (unless same has been precluded by virtue of a Bankruptcy filing); and
8. Such other and further relief as the Court may deem just and equitable.

Notice is hereby given to the Defendant that the Plaintiff intends to seek satisfaction of any judgment rendered in its favor in this action out of any debt accruing to said defendant by reason of her personal services, (unless same has been precluded by virtue of a Bankruptcy filing).

Dated at Hartford, Connecticut on October 29, 2002.

PLAINTIFF  
Washington Mutual Bank, F.A.

By  
Geoffrey K. Milne, Esq.  
Hunt Leibert Chester & Jacobson, P.C.  
Its Attorneys

<b>RETURN DATE:</b> November 19, 2002	:	<b>SUPERIOR COURT</b>
<b>WASHINGTON MUTUAL BANK, FA</b>	:	<b>JUDICIAL DISTRICT OF STAMFORD-NORWALK</b>
<b>VS:</b>	:	<b>AT STAMFORD</b>
<b>RICHARD L. HOLT AND DORSUM NEMUS LIMITED LIABILITY COMPANY</b>	:	<b>October 29, 2002</b>

**STATEMENT OF AMOUNT IN DEMAND**

The amount, legal interest, or property in demand is not less than \$15,000.00, exclusive of interest and costs.

**PLAINTIFF**  
Washington Mutual Bank, FA  
  
By \_\_\_\_\_  
Geoffrey K. Milne, Esq.  
Hunt Leibert Chester & Jacobson, P.C.  
Its Attorneys

**EXHIBIT "E"**

**© Washington Mutual**

FBI, Sac 1993  
Northridge, CA 07/12/93-1993

March 20, 2002

Mr. Richard Holt  
23 Ridgewood Road  
Norwalk, CT 06851

Re: Loan Number: 760  
Property: 23 Ridgewood Road  
Norwalk, CT 06851

Dear Mr. Holt:

This letter is to confirm that we have corrected the credit for January 2002 on the above referenced loan.

Please accept our apology for any inconvenience this may have caused you. This level of service is not representative of the service level that Washington Mutual strives to provide. Thank you for allowing us the opportunity to be of service to you.

Sincerely,

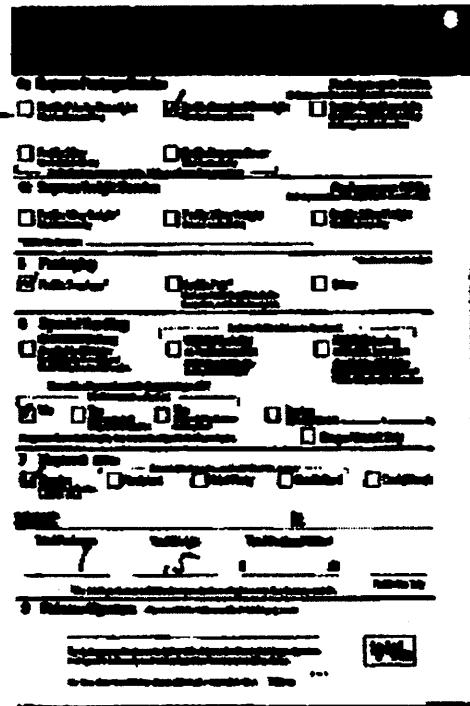
**©WU**  
Collection Support Department  
(800) 255-4840

**©WU**

116

FedEx USA AIRMAIL 1883467218837

09/17/17 203,253-1715  
R HOLT  
CDC  
PO BOX 247  
Perryton CT 79353  
FARMERS INSURANCE 80,252-4840  
WORKERS MUTUAL  
9451 CORBIN AVE - HOHOKAM  
NORTHLAKE CA 91324



111

FedEx USA Airbill # 835358998677  
89/27/2002  
R HOLT 203-853-1715  
CDC  
PO BOX 247  
REWARD CT 06857  
[REDACTED]  
PAYMENT PROCEDURE 800-282-4810  
WASHINGTON MUTUAL  
9451 CORBIN AVENUE NO 10103  
NORWICH CA 91324

W Washington Mutual

04/29/02

CENTRA DATA COMMUNICATION LLC  
P.O BOX 456 GRAND CENTRAL STATION  
NEW YORK, NY 10163

Re: Loan No.: 19990

Dear Customer(s)

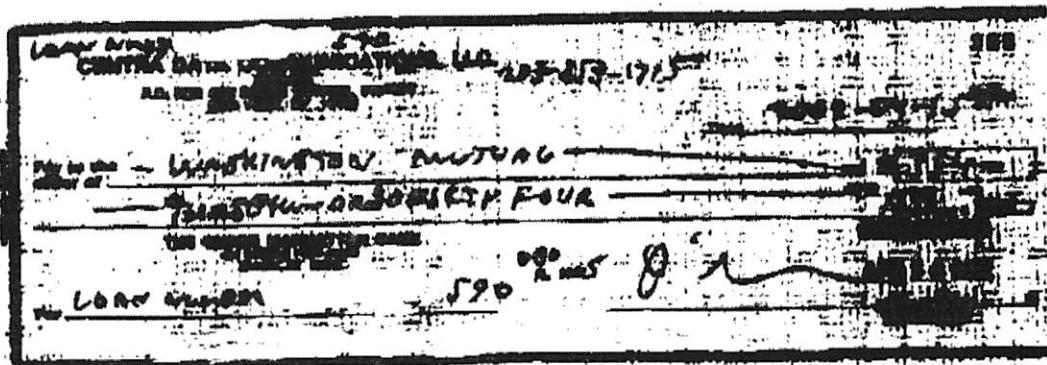
We are returning your check number 303 in the amount of 354.00 for the following reason(s)

**EMERGENCY PAYMENT**

If you any question in regards to your mortgage loan, please do not hesitate to give us a call or you can contact our Customer Service Hotline at (800) 282-4840 to assist you with your needs.

Sincerely,

Cash Management



FedEx USA Mail # 835667339513

06/26/2002 212-340-1272

CDC

212-592-3676

Po Box 456 GCT

NEW YORK NY 10163

CTU CM308

CASH MANAGEMENT 800-282-4840

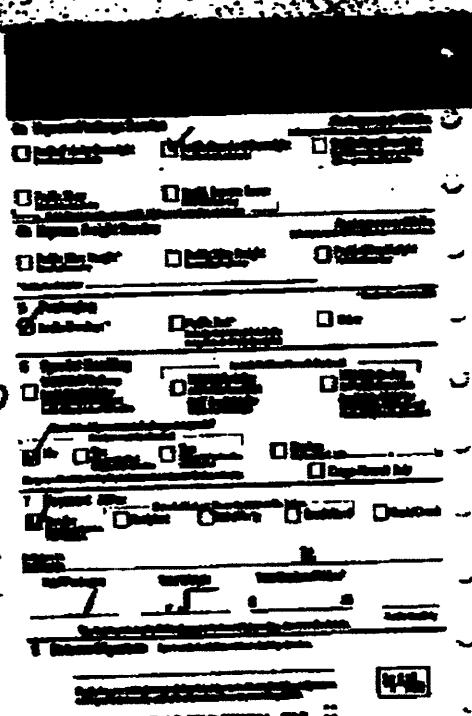
WASHINGTON MUTUAL

9451 CORBIN AVENUE

NORWIGE CA 91328

120

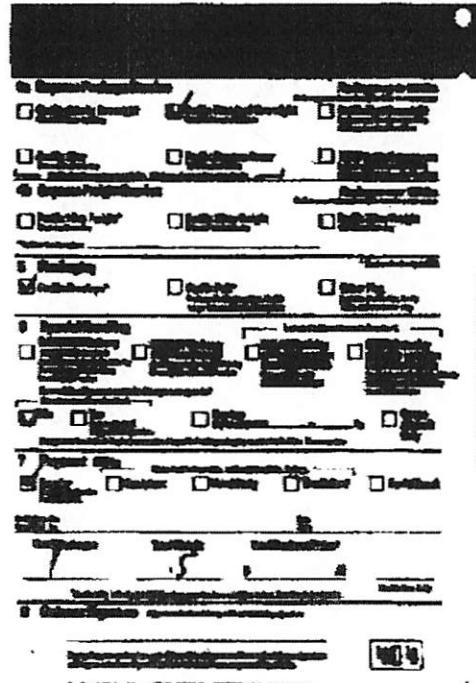
FedEx USA 11612 835358829620  
05/23/2002  
R HOLT 22340-1272  
CDC  
PO BOX 456 GCT  
NEW YORK NY 10163  
PAYMENT PROCESSING 202-282-4840  
WASHINGTON MUTUAL  
75 N PARKWAY VMA203  
VERON MILLS IL 60061



b11

FedEx USA Mail # 830723156702

7/1/2012 242,340-1272  
CDC  
PO BOX 456 GCT  
NEW YORK NY 10163  
CRU CHW 314  
CASH MANAGEMENT 200,2824840  
WASHINGTON MUTUAL BANK  
9451 CORBIN AVENUE  
NORTHRIDGE CA 91329



■ Washington Mutual

August 07, 2002

Richard Hale  
23 Ridgewood Rd  
Norwalk, CT 06853

Re: Loan No: 100  
Property Address: 23 Ridgewood Dr  
Norwalk CT 06853

Dear Customer(s):

We value your business and want to thank you for your recent payment on the above referenced loan.

We are unable to accept your payment at this time because the amount does not represent the total amount due on your loan, and partial payments are not acceptable. As a result, we are returning check number 314 in the amount of \$1099.05, dated 071502.

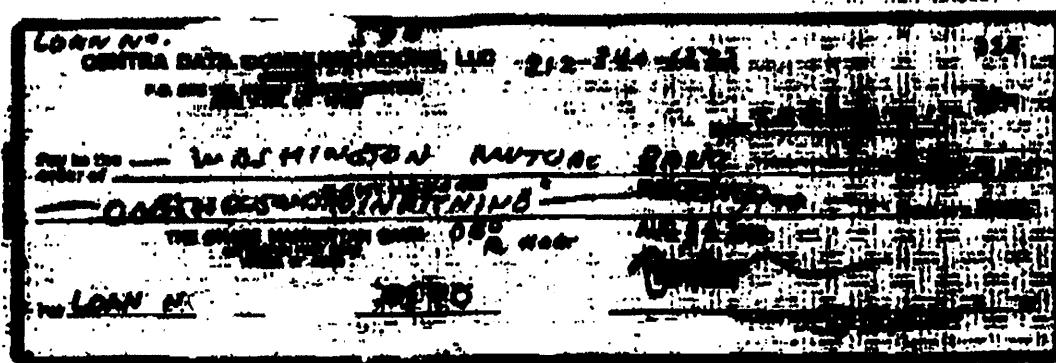
In order to process your monthly payment and properly credit your account, we encourage you to call this office at the number listed below prior to remitting your payment.

Thank you for the opportunity to serve you, and for your prompt attention to this matter.

Washington Mutual  
Collection Department  
(866) 222-4840

CM018-010

152



■ Washington Mutual

August 26, 2002

Richard Holt  
23 Midwood Dr.  
Norwalk, CT 06853

DR: Loan No: 9886  
Property Address: 23 Midwood Dr  
Norwalk CT 06853

Dear customer(s):

We value your business and want to thank you for your recent payment on the above referenced loan.

We are unable to accept your payment at this time because the amount does not represent the total amount due on your loan, and partial payments are not acceptable. As a result, we are returning check number 187 in the amount of \$1699.88, dated 08/15/02.

In order to process your monthly payment and properly credit your account, we encourage you to call this office at the number listed below prior to remitting your payment.

Thank you for the opportunity to serve you, and for your prompt attention to this matter.

Washington Mutual  
Collection Department  
(800) 363-4545

CM216-610

<input checked="" type="checkbox"/> <u>Washington Mutual Bank</u>	<input type="checkbox"/> <u>Washington Mutual Bank, Pa.</u>	<input type="checkbox"/> <u>Washington Mutual Bank, Inc.</u>
<u>18 99.85</u>		<u>3/16/88</u>
<u>LIDE T</u>	<u>RICHARD</u>	<u>106</u>
<u>90</u>		

三

<input checked="" type="checkbox"/> Washington Mutual	<input type="checkbox"/> Washington Mutual Bank	<input type="checkbox"/> Washington Mutual Bank, FA	<input type="checkbox"/> Washington Mutual Bank, Inc.
		<i>1999-85</i>	<i>3-9-13-07</i>
<i>Holt</i>		<i>Richard</i>	
		<i>500</i>	

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■ Washington Mutual

September 24, 2002

Richard Holt  
23 Ridgewood Rd  
Norwalk, CT 06853

ATT:  
ANDREW  
SAMUEL

RE: Loan No: 1880  
Property Address: 23 Ridgewood Dr  
Norwalk CT 06853

Dear Customer(s):

We value your business and want to thank you for your recent payment on the above referenced loan.

We are unable to accept your payment at this time because the amount does not represent the total amount due on your loan, and partial payments are not acceptable. As a result, we are returning check number 220 in the amount of \$1688.65, dated 09-13-02.

In order to process your monthly payment and properly credit your account, we encourage you to call this office at the number listed below prior to remitting your payment.

Thank you for the opportunity to serve you, and for your prompt attention to this matter.

Washington Mutual  
Collection Department  
(800) 263-4240

CMR16-010

129

to Washington Mutual

F.D. Box 1007  
Memorandum CA 01720-1007

September 19, 2002

Richard Holt  
28 Ridgewood Road  
Norwalk CT 06853

Re: Loan Number: 0690  
Property: 28 Ridgewood Drive  
Norwalk CT 06853

Dear Mr. Holt:

This letter is to confirm that we have received your correspondence dated 9/13/02. Please be advised that we have reviewed your loan and have verified that funds in the amount of \$359.47 have posted to your loan toward late charges on 11/16/01.

We currently show that your loan is due for the April 2002 payment.

In reviewing your loan, we can reverse the following funds of \$751.12 from Late Charges and \$801.58 from Suspense to be applied as the April 2002 payment once the difference of \$214.61 has been received.

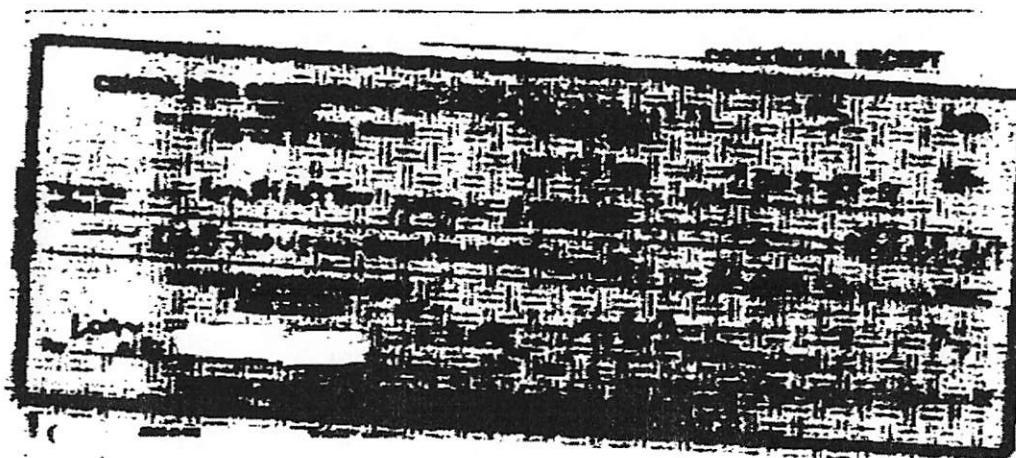
If you should have any questions concerning this matter please feel free to contact us at the number listed below. Thank you for allowing us the opportunity to be of service to you.

Sincerely,

*Sarah Lautario*  
Collection Support Department  
(800) 282-4840

④ L-4770

128



130

191



1544A 33

1-9-13-02

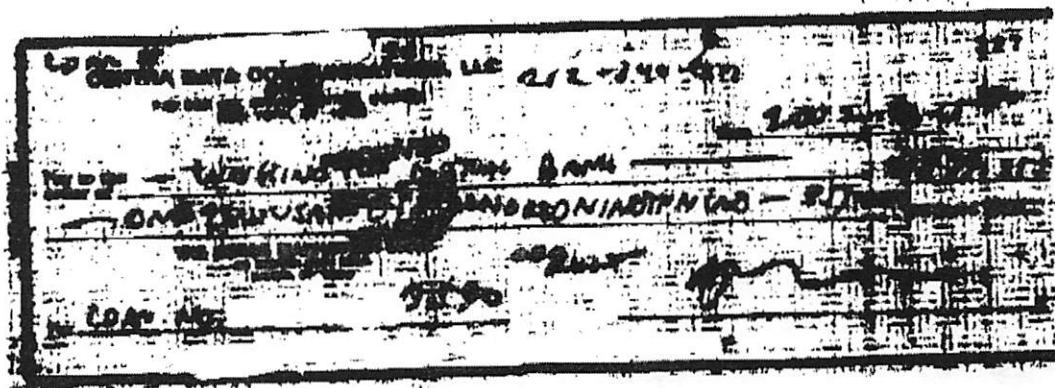
Holt

Ruth

1592

**ANSWER** The answer is 1000. The first two digits of the answer are 10, which is the same as the first two digits of the dividend.

This instrument, by delivery of the last payment, shall cease to be valid or binding, except as provided above.  
"Agent". By delivering your last payment check above, you agree to the following: THAT THE PAYMENT OR YOUR (E.)  
THE AGENT'S RIGHT TO DEFER YOUR LAST PAYMENT TO THE PREVIOUS BUSINESS DAY PENDING  
THE RECEIPT OF YOUR CHECK, WILL NOT BE DEEMED AS A WAIVER OF ANY BREACH OF THIS CONTRACT, AND WILL NOT BE  
DEEMED AS A WAIVER OF ANY BREACH OF THIS CONTRACT, OR AS A RELEASE FROM YOUR LIABILITY FOR  
ANY BREACH OF THIS CONTRACT, WHETHER OR NOT THE PAYMENT IS MADE ON THE DATE STATED IN THE PAYMENT SCHEDULE  
AND/OR WAIVED BY THE AGENT. THIS AGREEMENT IS SUBJECT TO COMPLIANCE WITH THE PAYMENT SCHEDULE  
AND/OR WAIVERS OF THIS CONTRACT. THIS AGREEMENT DOES NOT CONSTITUTE ACCEPTANCE OF THE PAYMENT BY  
THE AGENT OR A WAIVER OF ANY BREACH OF THIS CONTRACT. THE AGENT HAS NO LIABILITY, WHETHER CONTRACTUAL, THE RIGHT, AT ITS  
DISCRETION, TO NOT ACCEPT THE PAYMENT AND RETURN IT TO YOU AND/OR TO EXERCISE ANY OF ITS RIGHTS AND  
REMEDIES IN THE EVENT OF A BREACH, UNDER THE TERMS OF YOUR CONTRACT.



**© Washington Mutual**

November 01, 2002

Richard Holt  
23 Ridgewood Rd  
Norwalk, CT 06853

RE: Loan No.: 590  
Property Address: 23 Ridgewood Dr  
Norwalk CT 06853

Dear Borrower(s):

We are returning your check number 332 in the amount of \$1,899.95, dated 10/25/02 as the amount does not represent the total amount due on your loan, and partial payments are not acceptable.

Your loan is in foreclosure. You must contact the following attorney to determine the amount now due:

Attorney Name:  
Law Firm: Hunt, Leibert & Chester  
Telephone Number: 860-246-5889

All foreclosure reinstatements must be paid in Certified Funds.

Washington Mutual  
Foreclosure Department  
(800) 282-4840

PC325-013

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**FedEx USA AIRBILL # 837674783779**

11/04/2002

RICHARD HOLT 203-866-3420  
ASSET TR

P.O. BOX 247 Rowayton CT 06853

DEBBIE CORONP 813-775-6238  
WASHINGTON MUTUAL  
9200 OAKDALE QSM

MURKINAGE CA 91328

[REDACTED]

[REDACTED]

[REDACTED]

**to Washington Mutual**

November 07, 2002

Richard Holt  
23 Ridgewood Rd  
Norwalk, CT 06853

Re: Loan No: 490  
Property Address: 23 Ridgewood Dr  
Norwalk CT 06853

Dear Borrower(s):

We are returning your check number 0391261071 in the amount of \$314.61, dated 11/04/02 as the amount does not represent the total amount due on your loan, and partial payments are not acceptable.

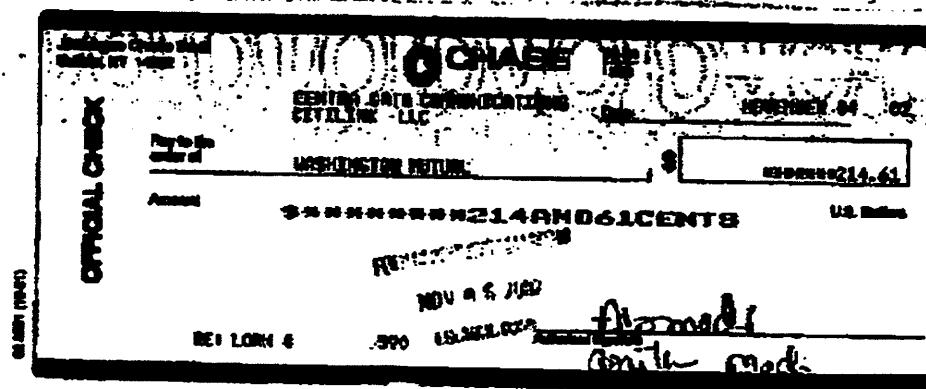
Your loan is in foreclosure. You must contact the following attorney to determine the amount now due:

Attorney Name:  
Law Firm: Mint, Leibert & Chester  
Telephone Number: 860-346-5459

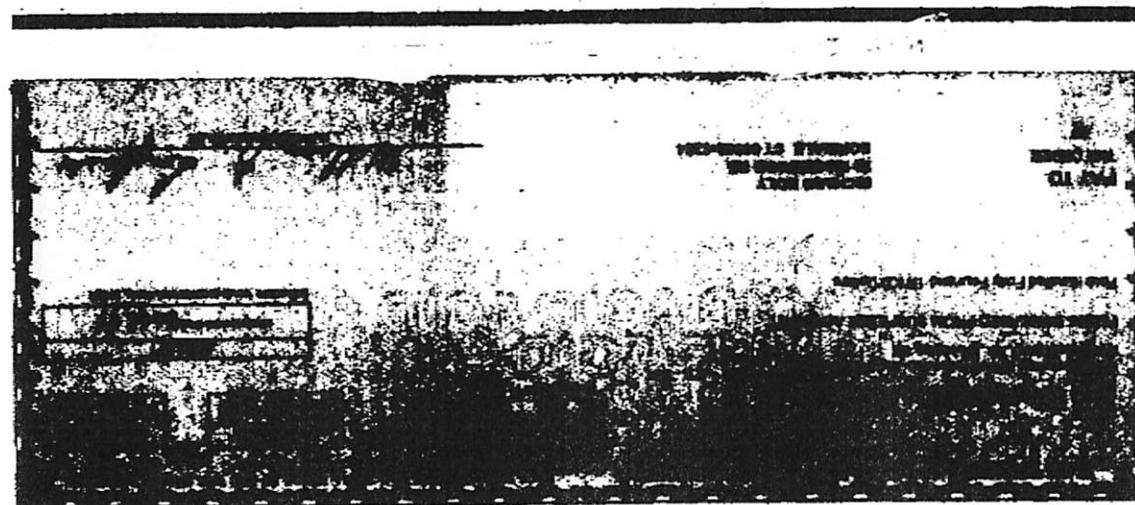
All foreclosure reinstatements must be paid in Certified Funds.

Washington Mutual  
Foreclosure Department  
(800) 553-4540

PC135-013



131



133

to Washington Mutual

04/30/02

CENTRA DATA COMMUNICATION LLC  
P.O BOX 456 GRAND CENTRAL STATION  
NEW YORK, NY 10163

Rec. Loan No.: 19590

Dear Customer(s)

We are retaining your check number 305 in the amount of 334.00 for the following  
reason(s)

**SHORT PAYMENT**

If you any question in regards to your mortgage loan, please do not hesitate to give us a  
call or you can contact our Customer Service Hotline at (800) 282-4940 to assist you with  
your needs.

Sincerely,

Cash Management

**EXHIBIT "F"**

# News Analysis & Commentary



BANKING

## IS THIS ANY WAY TO RUN A BANK?

WaMu's alleged blunders have it fending off lawsuits and complaints

**W**HEN SHERRY COLBY decided to pay off the mortgage on her Houston house with some of the money she had collected from her insurance company for mold damage, she thought her troubles were over. Instead, she merely traded one nightmare for another. In February, she forwarded two insurance company checks for nearly \$35,000 to her mortgage company, Washington Mutual. The money went into an escrow account, and she continued to make monthly payments through July. And although she sent in the balance of the mortgage in August, by Labor Day, Colby received threatening calls from debt collectors saying she had fallen behind on her payments.

What happened? In August, Colby claims, the funds somehow vanished as they moved from the escrow account to the payoff department. Says the 44-year-old CPA: "They've lost the money."

WaMu says privacy issues prevent it

from discussing the case. But Colby is just one of scores of disgruntled customers from around the country. The fast growing, Seattle-based Washington Mutual Inc. has been fending off lawsuits and complaints in states ranging from Minnesota to Washington and California.

As the problems in Texas pile up—since mid-2002, some 200 individual consumer complaints have been filed against WaMu—Business Week has learned that Texas' Attorney General's Office has launched an investigation into WaMu's mortgage business practices. The AG's office is looking into allegations of everything from lost mortgage payments to improper foreclosures. Fay L. Chapman, WaMu general counsel, acknowledges the bank may have made some mistakes and is reviewing each complaint individually. "We have been working co-

### HOME LOAN BLUES

Colby says that WaMu lost her mortgage money

operatively with the Attorney General's office," she says.

The dustups with customers come as WaMu execs work to

turn a once little-known regional thrift into a kind of Wal-Mart of consumer banking. Since 1991, WaMu has been on a massive expansion tear as it seeks to acquire millions of new retail and home loan customers. Acquiring its way into such big markets as Texas, California, and New York, WaMu now ranks as the nation's top thrift and mortgage lender, serving 12.3 million households, with \$283 billion in assets and 2,650 offices coast to coast.

### ILLEGAL FEES?

YET AS THE BANK HAS GROWN, so has its stable of unhappy customers around the country. Last month, Minnesota District Court Judge Steven Z. Lange granted national class action status to a January, 2003, suit that alleged WaMu charged "illegal prepayment penalty fees" to borrowers paying off their mortgage loans. WaMu concedes it has overcharged some customers in Minnesota. In August, the bank settled a Seattle lawsuit alleging that WaMu had lost mortgage payments, posted payments late or improperly, charged erroneous fees, and filed inaccurate reports to credit agencies. As part of the settlement, the bank agreed to review complaints from more than 1,000 customers. In July, a separate Seattle suit was certified as a class action covering some 150,000 customers in five Western states. It alleged WaMu "improperly collected" reconveyance, statement, and other fees when customers paid off their home loans. WaMu disputes those charges and says it will "defend these claims vigorously."

The problems have left WaMu scrambling to improve its customer service and processing systems. As a result, direct complaints to WaMu have declined 35% in the first six months of 2003, and misapplied mortgage payments from April to August fell 33%, according to John Rostas, WaMu's senior vice-president of operational excellence. Still, if Sherry Colby is any indication, WaMu has a ways to go. ■

—By Stephanie Anderson  
Forest in Dallas

### LOSING GLITTER

WaMu has racked up a variety of customer complaints, including:

LOST mortgage payments

EXCESSIVE and erroneous fees

MISHANDLED properly tax payments

INACCURATELY filed credit reports

**FRANK QUATTRONE  
INSIDE HIS MONEY  
MACHINE (P.104)**

**VANISHING JOBS  
IS IT RIGHT TO  
BLAME CHINA? (P.32)**

**NOKIA TAKING ON  
NINTENDO AND  
SONY IN GAMES (P.50)**

*McGraw-Hill Companies*

# BusinessWeek

SEPTEMBER 13, 2003

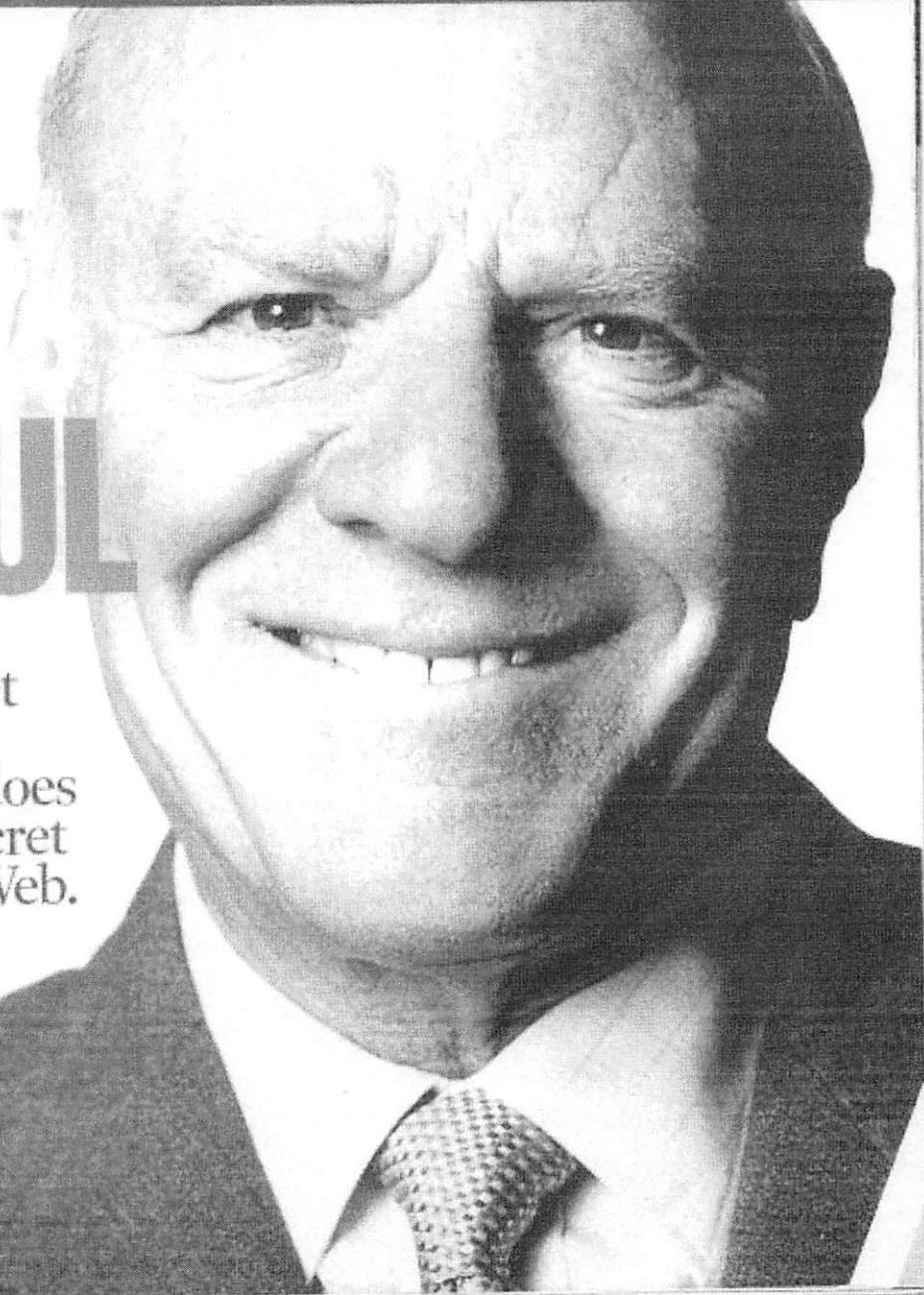
[www.businessweek.com](http://www.businessweek.com)

## THE WEB MOGUL

**BARRY DILLER**

never had a secret plan to take over Vivendi. But he does have a not-so-secret plan to rule the Web.

**Page 62**



\$5.95 US \$6.95 CAN

412





# REPORT OF 2004 PROGRESS & INITIATIVES

TEXAS ATTORNEY GENERAL  
GREG ABBOTT

## HIGHLIGHTS

COLLECTED A RECORD \$1.67 BILLION IN CHILD SUPPORT PAYMENTS in 2004. The collections benefitted 685,000 children.

ARRESTED 32 ONLINE CHILD SEXUAL PREDATORS, with a perfect conviction record in cases brought to trial.

SUED A UT STUDENT RUNNING ONE OF THE WORLD'S LARGEST EMAIL SPAM OPERATIONS. The business used more than 250 assumed names to deceive consumers.

TRAVELED ACROSS THE STATE EDUCATING TEXAS SENIORS ABOUT PHONY SWEEPSTAKES, FOREIGN LOTTERIES, AND OTHER SCAMS. Urged consumers statewide to "Just Hang Up" on unsolicited telemarketing calls and identity theft scams.

RECEIVED THE MEDICAID FRAUD CONTROL UNIT OF THE YEAR AWARD from the U.S. Department of Health & Human Services.

TRACKED DOWN 124 CHILD SEXUAL PREDATORS WANTED FOR PAROLE VIOLATIONS, including two fugitives on the run for 13 years.

WON GUILTY PLEAS OR VERDICTS IN 25 CRIMINAL CASES involving capital murder, intoxication manslaughter, gambling, sexual assault of a minor, and other crimes.

ISSUED 10,974 OPEN RECORDS LETTER RULINGS. Approximately 27% of these were issued in ten business days or less, and 49% in twenty days or less. Answered over 11,000 calls to the Open Government Hotline.

COLLECTED \$50.7 MILLION IN TAXES AND DEBTS OWED TO THE STATE, including nearly \$5 million from bankrupt MCI/WorldCom.

## SUPPORTING CHILDREN & FAMILIES

ARRESTED NINE PEOPLE ON THE 2004 TOP TEN CHILD SUPPORT EVADER LIST and sent more than 2,800 parents to jail for failing to pay support.

ESTABLISHED PATERNITY FOR 59,000 CHILDREN AND CHILD SUPPORT ORDERS IN NEARLY 57,000 CASES. The State earned more than \$36 million in federal child support performance incentives. Obtained signed paternity acknowledgments for nearly 70% of the children born out of wedlock in Texas.

## FIGHTING MEDICAID FRAUD

RECOVERED \$36 MILLION IN OVERPAYMENTS AND CIVIL PENALTIES from the makers of Paxil, Flonase, Cipro, Claritin and other drugs. The companies were caught inflating prices and mislabeling their products.

WON A GUILTY PLEA FROM AN EAGLE PASS DOCTOR IN A \$304,000 MEDICAID FRAUD CASE. The doctor was charged with overbilling for sonograms and using unapproved drugs imported from Mexico.

WON RECORD PRISON SENTENCES FOR A HUSBAND AND WIFE TEAM WHO STOLE \$646,000 FROM MEDICAID. The woman, a licensed counselor, got 63 years in prison; her husband received a 35-year sentence.

WON A 10-YEAR SENTENCE, PLUS \$8.4 MILLION IN RESTITUTION against a Midland doctor who overbilled Medicaid for services at a walk-in clinic.

## PROTECTING VICTIMS OF CRIME

AWARDED MORE THAN \$72 MILLION IN CRIME VICTIMS COMPENSATION – A NEW RECORD. Received a record 38,800 applications, and certified 95 sexual assault nurse examiners.

AWARDED \$33.7 MILLION IN GRANTS to more than 300 public and non-profit victim assistance organizations, and trained more than 4,200 victim service professionals.

CONTINUED BUILDING THE TEXAS VINE NETWORK, which gives crime victims information about offender status and court developments. At year end, VINE was available in 93 county jails and 62 court systems across the state.

## PROTECTING TEXAS CONSUMERS

WON MORE THAN \$1 MILLION IN RESTITUTION from 14 Houston-area car dealerships that forced car buyers to purchase maintenance coupons. More than 4,000 consumers received restitution.

WON INJUNCTIONS AGAINST ELEVEN TELEMARKETING FIRMS for violating the Texas No-Call law.

SHUT DOWN THE TEXAS POLICE OFFICERS ALLIANCE (TPOA), a fraudulent charity that raised almost \$300,000 from donors, but paid only \$500 in benefits to the families of slain peace officers.

WON A \$23 MILLION JUDGMENT against the officers and directors of a charity that gave scholarships to needy students. The directors and officers were held liable for paying themselves grossly excessive compensation and benefits.

SUED DELAWARE-BASED CROSS COUNTRY BANK FOR PREYING ON LOW-INCOME CONSUMERS. The bank offered credit of up to \$2,500, but for most consumers the limit was as low as \$200 and in many cases, finance charges and fees used up most of the issued credit.

WON REFUNDS TOTALING \$4.2 MILLION FOR MORE THAN 18,000 TEXAS POLICYHOLDERS who overpaid on car repair claims that should have been covered by insurance.

SUED BANKRUPT TELECOM RESELLER NORVERGENCE for scheming to defraud hundreds of small Texas businesses.

**FORCED WASHINGTON MUTUAL TO STOP MISHANDLING MORTGAGE AND ESCROW ACCOUNTS.** Reformed business practices will help ensure that company errors do not result in wrongful foreclosures or unfair consumer credit reports.

**SHUT DOWN THREE FRAUDULENT MORTGAGE BROKERS IN EL PASO** for operating without proper licenses, charging illegal fees on home equity loans, and falsifying documents.

## FIGHTING FOR AFFORDABLE HEALTHCARE

**SECURED \$30 MILLION FOR CHARITY HEALTHCARE AT A LAREDO HOSPITAL** and helped a charity hospital in Dallas recover \$ 23 million wrongfully taken during the sale of the facility.

**SUED A FLORIDA DISTRIBUTOR** for charging exorbitant prices for flu vaccine.

**WON \$1.1 MILLION IN CONSUMER REFUNDS FROM BANKRUPT MARK NUTRITIONALS INC.** The company claimed its product let people lose weight while sleeping, without exercise or dieting.

**OBTAINED A \$38 MILLION MULTISTATE SETTLEMENT FROM DRUG MAKER WARNER-LAMBERT** which improperly promoted the epilepsy drug Neurontin as a treatment for back pain, psychiatric disorders (including bi-polar disorder), and attention deficit disorder.

## PROTECTING HISPANIC TEXANS

**SENT A DALLAS-AREA WOMAN TO PRISON FOR 97 MONTHS FOR POSING AS A FEDERAL IMMIGRATION OFFICER** and won a \$ 1.4 million civil judgment against her for defrauding immigrant families in the Dallas area.

**WON \$900,000 IN RESTITUTION FROM A HIDALGO COUNTY NOTARY PUBLIC**, in the first-ever trial under the Texas "notario" statute. The defendant claimed to be an attorney and charged fees to prepare immigration documents.

**SUED MIDLAND-BASED APPLICACION DE ORO AND ITS OWNERS** for providing unauthorized legal services to almost 600 consumers.

**SENT A DALLAS WOMAN TO JAIL ON CIVIL CONTEMPT CHARGES.** She defrauded consumers by charging them over \$ 1,000 each for immigration services she could not legally provide, then did little or no work on their cases.

**SUED OAK CLIFF-BASED GRUPO ECSA**, whose owner promoted her business through a website and radio advertisements, defrauded immigrants of at least \$ 1.7 million, and was sent to jail for violating a court order to stop promoting her business.

**WON \$3.3 MILLION IN CIVIL PENALTIES AND MORE THAN \$200,000 IN RESTITUTION FROM CITY MORTGAGE SERVICES OF DALLAS.** Company owners pocketed mortgage payments instead of sending them to the lenders, leaving hundreds of homeowners in danger of losing their homes.

**SUED SEVERAL FLORIDA-BASED CREDIT CARD COMPANIES, INCLUDING PROLINE AND LATINCARD PLUS.** Defrauded consumers by charging them an up-front fee of nearly \$ 300. The companies promised major credit cards with high credit limits to Hispanic consumers. In reality, the cards were only good for purchases from the companies' catalogs and Web sites. Texas was the first state to act to stop this nationwide scam.

## OTHER HIGHLIGHTS

VIGOROUSLY DEFENDED TEXAS' RIGHT TO HAVE A TEN COMMANDMENTS MONUMENT on the grounds of the State Capitol.

SUED SECOND CHANCE BODY ARMOR, INC., one of the largest makers of bullet-proof vests, for failing to reveal serious flaws that could jeopardize the lives of law enforcement officers.

SAVED THE STATE MORE THAN \$2 BILLION IN REVENUE IN 2004, most of it from a case involving USAA. This case determined that insurance companies owe sales and other general taxes to the State.

COLLECTED MORE \$18 MILLION FROM SIX MAJOR OIL COMPANIES that underpaid crude oil production taxes owed to the State.

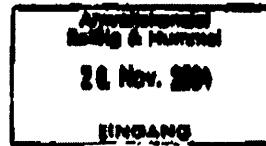
SHUT DOWN A ROCK QUARRY THAT WAS POLLUTING THE BRAZOS RIVER, and sued six other rock and sand quarries for similar violations.

HELPED 56 TEXAS AGENCIES AND UNIVERSITIES GET REIMBURSEMENT FROM NATIONAL GYPSUM COMPANY to cover the cost of removing asbestos from their buildings.

FORCED ALCOA TO PAY MORE THAN \$12.4 MILLION TOWARD CLEAN-UP OF HAZARDOUS WASTE POLLUTION IN LAVACA BAY. The pollution came from an aluminum plant in Port Comfort.

**EXHIBIT "G"**

11/27/2004 11:12 AM  
26/11/2004 15:11 63455381291  
From: To:  
RAE REIBIG, ESQ.  
Page: 3  
S. 51



**Washington Mutual**

Legal Department  
Mailstop: WMT 1700  
1201 Third Avenue  
Seattle, WA 98101

(206) 577-8186 direct  
(206) 577-2865 fax  
[dfm@wmu.wellsfargo.com](mailto:dfm@wmu.wellsfargo.com)

November 23, 2004

**VIA FAX**

Jens Reibig, Esq.  
Reibig & Hummel  
Friederike 13 A  
06114 Halle  
Germany

Re: Mortgagor: Richard Holt  
Web# Loan No.: 2990  
Property Address: 23 Ridgewood Drive  
Norwalk, CT 06853

Dear Mr. Reibig,

Thank you for your letter dated September 10, 2004. We very much appreciate your patience in awaiting our reply.

We understand that your client may be frustrated with the lack of customer service he received from Washington Mutual Bank. We apologize for this and, by way of this letter, will hopefully be on our way to amicably resolving this matter.

Your concern of Washington Mutual having a "... duty to not lose payments ..." is agreed. However, Mr. Holt still has a duty to keep making his mortgage payments under any circumstances. The last payment we received was on July 1, 2003 in the amount of \$965.74, which was applied as the April 2002 payment.

We do understand that there may have been confusion on the part of Washington Mutual representatives as to what Mr. Holt promised to send in and what was perhaps captured in system notes thereby the payments getting sent back. We apologize for this. As a customer service gesture to bring the total amount due down on this loan, we are willing to waive all late, property inspection, NSF and payoff statement fees accrued on this loan. This amount totals \$3,194.67, of which \$214.99 has been previously waived. Additionally, \$1,108.54 of the total amount has been processed as paid, which we will credit to the loan's suspense (holding) account. In summary, the total amount of fees currently owed (and that we are willing to waive) on Mr. Holt's loan totals \$1,870.94.

11/6/2004 11:26 AM  
25/11/2004 15:11 03455201291

From: To:  
RAE REISSIGSHMEL

Page 2  
S. 82

Jens Reibig, Esq.  
Re: Richard Holt  
November 23, 2004  
Page 2

Mr. Holt's loan is currently in default; however, the holds are in place through January 31, 2005. Foreclosure activities did start on this loan in October 2002. We will agree to waive the \$6,887.67 in foreclosure fees assessed due to that it appears Mr. Holt did try and make payments before the foreclosure process started. We will also have removed any foreclosure information we reported to the consumer reporting agencies to which we report as well as reverse any derogatory reporting from the origination of this loan through July 2002 (the last month a payment was received).

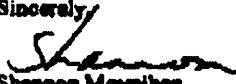
In the loan's suspense account currently, there is \$444.17. We can apply this amount with the \$1,108.54 (this amount reflects fees already paid) to the total amount due on this loan which totals \$1,552.71.

At present, Mr. Holt's escrow account is at a negative amount of (\$38,087.70). The total amount currently due on this loan is \$67,344.63, this amount represents only principle, interest, and all fees currently owed (not the escrow). However, with the above mentioned fees that we are willing to waive, i.e., \$8,738.61, and the \$1,552.71 to be applied to the loan from the suspense account, the total amount due at present would be \$57,033.51, plus escrow. Enclosed please find for your information a breakdown of the above figures.

We will request our Homeowner's Assistance Department to send an application to Mr. Holt directly at his Connecticut address. If Mr. Holt is approved for a repayment schedule of the total amount due on this loan, it will be worked through the Homeowner's Assistance Department.

We understand, per your letter, that Mr. Holt is pursuing discussions with the appropriate taxing authority as to our tax disbursements from his escrow account, which we consider owed and due. Please keep us posted on these discussions. In most instances where there have been overpayments to a taxing authority, the homeowner is reimbursed directly, not the lender. If there has been a mistake by the taxing authority and a reimbursement check is sent to Mr. Holt, please have him forward those funds to us immediately for our deposit into his escrow account.

The foregoing is offered for Mr. Holt's consideration and is contingent on him signing a Release as to the circumstances surrounding these matters on this loan. Please let us know how you wish to proceed. Thank you.

Sincerely,  
  
Shannon Moynihan  
Paralegal

11/27/2004 11:28 AM  
26/11/2004 15:11 03455201291

From: To:  
**RA E REISSIGERHUMMEL**

Page 3  
S. 03

**Jens Reibig, Esq.**  
**Re: Richard Holt**  
**November 23, 2004**  
**Page 3**

**Enclosure**  
**Cc: Fay Chapman, General Counsel**  
**Melissa Sirovina, Executive Response Center**  
**Quality Service Management**  
**SMM/mn**

22/07/2004 16:20 83455201291

RA'E REISSIG@MIMTEL

S. 01

ATTN: Jens Reibig

Seite 1 von 1

**Volker Kadler**

---

Von: Moynihan, Shannon [shannon.moynihan@wamu.net]  
Gesendet: Montag, 19. Juli 2004 23:30  
An: Info@hat-anwalt.de  
Betreff: ATTN: Jens Reibig  
Wichtigkeit: Hoch

<<Washington Mutual Legal1.htm>>

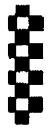
Attorney Reibig.

Please see attached letter regarding Richard Holt. Original to follow via U.S. First-Class Mail. Thank you.

Shannon Moynihan  
Consumer Group Attorney  
206.377.8184 - voice  
206.377.2233 - fax

Washington Mutual  
Legal Department  
Mailstop: WML 1706  
1001 Third Avenue  
Seattle, WA 98101

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02/02/2008 10:07 PM  
02/02/2008 11:37 03485281291  
**FW: Message for Mr. Rabbie**

To: **RATE REGISTRATION**

Page 4

S. 82

Seite 1 von 2

**Original Message**

---

**Von:** Moynihan, Shannon [shannon.moynihan@wmu.edu]  
**Gezeichnet:** Montag, 31. Januar 2005 23:30  
**An:** [Info@RateRegistration.de](mailto:Info@RateRegistration.de)  
**Cc:** Sirovica, Malissa  
**Betreff:** FW: Message for Mr. Rabbie  
Washington High

The below message is regarding Richard Holt. Thank you.

-

**Shannon Moynihan**

Washington Mutual Bank, FA

Customer Group Analyst

AMERICAN - New

AMERICAN - New

**Original Message**

From: Moynihan, Shannon  
Sent: Monday, January 31, 2005 2:18 PM  
To: "Info@RateRegistration.de"  
Cc: Sirovica, Malissa  
Subject: Message for Mr. Rabbie  
Washington High

**ATTORNEY-CLIENT COMMUNICATION**

**NOT AN ATTORNEY WORK PRODUCT**

**-PRIVILEGED AND CONFIDENTIAL-**

Mr. Rabbie,

I am following up as to Washington Mutual's last written communication to you of 23 November, 2004. Please be advised that the loan will commence normal servicing as of 18 February, 2005. Please respond as to our 'offer' of this past November. Thank you.

--

**Shannon Moynihan**

Customer Group Analyst

AMERICAN - New

AMERICAN - New

Washington Mutual Bank, FA

Legal Department

07.02.2005

07/12/2017 10:07 AM  
07/12/2017 11:37 62488281201  
**FW: Message for Mr. Rabig**

To: **RAKE MERTIGAN-LAWRENCE**

From: **BB**

Subject: **Re: 2 von 2**

*Autogen MailLine*

*New MailLine*

*Autogen MailLine*

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**07.07.2003**

22/07/2004 16:26 03495261291

RAE REISIGER/HANDEL

6. 62

Washington Mutual  
Legal Department  
Mailstop: WMT 1708  
1201 Third Avenue  
Seattle, WA 98101  
(206) 277-6184 direct  
(206) 277-6234 fax  
[rae.reisiger@wmhome.com](mailto:rae.reisiger@wmhome.com)

July 19, 2004

Jane Reibig, Esq.  
Reibig & Hammel  
Privatkonto 11 A  
05114 Halle  
Germany

Re: Mortgagor: Richard Holt  
Webtix Loan No.: 02590  
Property Address: 23 Ridgewood Drive  
Norwalk, CT 06851

Dear Mr. Reibig,

Your letter regarding the above-referenced Washington Mutual mortgage loan addressed to Pay Chapman regarding our response to you from the Executive Response Center has been received.

We are, unfortunately, at a loss as to what your further concerns are. Since the Legal Department does not have access to loan servicing records, we asked for the assistance of the Executive Response Center to assist you by providing information as to Mr. Holt's loan. So, in trying to decipher the information you previously sent to Ms. Chapman as well as reviewing our responses to you, I asked for further clarification of the loan servicing records, and we are still of the understanding that Mr. Holt fails to owe us the payment for April 2001 (however, the missing funds are actually for the May 2001 payment), and July, 2001. We do not have record of receiving those payments. We ask again that you please forward, as soon as possible, the corrected payment statements so we can adjust our records accordingly.

Currently a payment in the amount of \$92,806.63 is needed to bring Mr. Holt's loan current. This amount was explained in detail in the loan history previously provided to you by the Executive Response Center, of which amount reflects principal; interest; late, NSF and property inspection fees; as well as the delinquent taxes Washington Mutual paid on Mr. Holt's behalf (the escrow account currently has a large negative balance of (\$38,087.76)). However, if you are able to provide the corrected payment statements along with payment of \$69,093.29, the

22/07/2004 16:20 03455201291

RAE REISSIGERHUMMEL

5. 03

Jesse Reibig, Esq.  
Re: Richard Holt  
July 19, 2004  
Page 2

loan will be brought current, of which this amount reflects the current balance due less the amount of the two 'missing' payments and the late fees accrued on them.

This account is seriously delinquent and due for the April 2002 through present payments. Since Mr. Holt's bankruptcy has been discharged, the foreclosure and collection activities may again proceed. However, in an effort to assist Mr. Holt in bringing his mortgage loan current before further costs are incurred due to foreclosure, we have put a suspension on foreclosure and collection activities as well as further late fee accrual on this loan for 60-days from the date of this letter. Mr. Holt may also apply for a payment workout plan. Please let us know if Mr. Holt would like to receive an application package from our Homeowner's Assistance Department for its review as to him qualifying for a repayment plan. After September 17, 2004, the loan will resume with normal servicing causing it to begin foreclosure activities unless the full payment due is received or a payment workout plan has been approved by this date.

We feel that we have provided you with sufficient information as to Mr. Holt's loan and consider this matter closed. However, if you feel there are other issues surrounding this loan, please provide them to us in writing. Thank you.

Sincerely,

  
Shaeleen Moynihan  
Paralegal

Cc: Fay Chapman, General Counsel  
Melissa Sirovina, Executive Response Counsel  
SMM/sm

**EXHIBIT "H"**

**PK MOTORS, INC. v. Page**

Dist. Court, MD Florida, 2007 - Google Scholar

... On the other hand, if the creditor elects to reject the dishonored check as payment, then the creditor is entitled to enforce the unpaid underlying obligation. ... Id. [3] Of course, PK Motors may be able to look to the two Cadillacs in satisfaction of its personal money judgment. ...

Related articles Cite Save

(2007)

**PK MOTORS, INC., d/b/a PARKER CADILLAC NISSAN, a Florida corporation, Plaintiff,**

v.

**MELVIN E. PAGE, and SANDRA J. PAGE, Defendants.**

Case No. 3:06-cv-693-J-33MMH.

**United States District Court, M.D. Florida, Jacksonville Division.**

July 16, 2007.

## **ORDER**

This matter comes before the Court pursuant to the Motion for Default Judgment (Doc. # 12), filed by **PK Motors** on January 23, 2007. **PK Motors** filed a proposed form of final judgment on March 6, 2007. (Doc. # 13.) The record reflects that Defendants Melvin E. Page and Sandra J. Page were served with process on November 5, 2006. (Doc. # 6; Doc. # 8.) On December 21, 2006, the Clerk entered a default against each Defendant. (Doc. # 10; Doc. # 11.) On April 13, 2007, the Court took **PK Motors'** motion under advisement and directed **PK Motors** to file a memorandum providing legal argument that supports its requested damages. **PK Motors** filed its memorandum on April 23, 2007. (Doc. # 23.) For the following reasons, the Court grants **PK Motors'** motion for default judgment and enters a money judgment in favor of **PK Motors**.

**PK Motors'** complaint alleges that on January 10, 2006, the Pages entered into written contracts to purchase from **PK Motors** two Cadillacs for a total price of \$127,885.38. (Doc. # 1, at 2.) This price reflected an \$18,000 credit **PK Motors** gave the Pages for a used vehicle the Pages traded in. (Doc. # 1, at 8.) The Pages gave **PK Motors** a check for \$127,885.38. (Doc. # 1, at 2.) **PK Motors** transferred to the Pages certificates of title to the two Cadillacs. (Doc. # 1, at 2.) However, the Pages' check was dishonored. (Doc. # 1, at 2.) **PK Motors** remains in possession of the two Cadillacs. (Doc. # 2, at 5.) The Court's jurisdiction is founded in diversity of citizenship. (Doc. # 1, at 1.)

In its motion, **PK Motors** seeks a default judgment awarding it three categories of relief. First, **PK Motors** seeks a money judgment of \$127,885.35 plus prejudgment interest. Second, **PK Motors** seeks a declaratory judgment that it is entitled to certificates of title to the two Cadillacs during any time in which the money judgment remains unpaid. Third, **PK Motors** seeks costs and attorney's fees.

**PK Motors'** motion did not reveal the legal theory under which it seeks such relief. **PK Motors** could be entitled to the requested money judgment on either of two theories, but not on both. Under the Uniform Commercial Code as codified in Florida, **PK Motors** is entitled to enforce either the contract for sale of the two Cadillacs or the check the Pages gave in payment. See Fla. Stat. § 673.3101(2)(c) (2006); Rajsfus v. Fabri, 535 So. 2d 690, (Fla. 3d DCA 1988) ("Under the Uniform Commercial Code, an action on a dishonored instrument may be maintained on either the instrument or the underlying obligation."); U.C.C. § 3-310 cmt. 3 ("If the check . . . is dishonored, the seller may sue on either the dishonored instrument or the contract of sale

...."). Thus, the Court directed **PK Motors** to file a memorandum identifying whether it seeks to **enforce** the contract or the check. **PK Motors** explained in its memorandum that it seeks to **enforce** the check. (Doc. # 16, at 4.) **PK Motors** also argued that, in addition to enforcement of the check, it is **entitled** to a declaratory judgment that it holds title to the two Cadillacs.

The Court grants **PK Motors** its requested money judgment, but the Court cannot simultaneously declare that **PK Motors** holds title to the two Cadillacs. Section 673.3101(2), Florida Statutes, provides,

if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

- (a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check... .
- (c) Except as provided in paragraph (d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person **entitled** to **enforce** the instrument, the obligee may **enforce** either the instrument or the obligation.

Fla. Stat. § 673.3101(2) (2006).<sup>[1]</sup> Paragraph (c) grants a disappointed seller the choice of enforcing either the check, or the underlying obligation for which the check was given. If the seller chooses to **enforce** the check, the underlying obligation is discharged. In re Brigance, 234 B.R. 401, 405 n.3 (W.D. Tenn. 1999) (interpreting Tenn. Code § 47-3-310(b)(3), a provision identical to Fla. Stat. § 673.3101(2)(c)).<sup>[2]</sup> In other words, if a seller chooses to **enforce** the check, the underlying obligation is treated as if it had been paid when the check was given. See *id.* By choosing to **enforce** the Pages' check, **PK Motors** has chosen to accept that check as payment for the Cadillacs. As a result, the sale is complete, and the Pages hold title to the Cadillacs.<sup>[3]</sup>

**PK Motors** has also requested prejudgment interest. In a diversity case, the Court follows state law governing prejudgment interest. SEB, S.A. v. Sunbeam Corp., 476 F.3d 1317, 1320 (11th Cir. 2007). Under Florida law, a prevailing plaintiff is **entitled** to prejudgment interest, at the statutory rate, from the date of the loss to the date of judgment. Ins. Co. of N. Am. v. Lexow, 937 F.2d 569, 572 (11th Cir. 1991). In the absence of a contractually agreed rate, the statutory rate of prejudgment interest in Florida is set by the state's Chief Financial Officer. Compare Fla. Stat. § 687.01 (2006) with Fla. Stat. § 55.03 (2006). In its proposed form of final judgment, **PK Motors** proposed that prejudgment interest run from the date of the filing of this action, and accrue at the rate of 5% per annum. In its memorandum, **PK Motors** demonstrates that the statutory rate of prejudgment interest was 9% in 2006 and is 11% in 2007. (Doc. # 16, at 5.) However, **PK Motors** states that it is prepared to accept prejudgment interest computed at 5%. The Court finds that interest rate appropriate. Additionally, the Court finds it appropriate that prejudgment interest run from the date of the filing of this action. See Bodine v. Federal Kemper Life Assurance Co., No. 85-1814-Civ., U.S. Dist. LEXIS 4158, at \*8 (M.D. Fla. Apr. 2, 1992). Accordingly, the Court grants **PK Motors** prejudgment interest of \$6,096.45.<sup>[4]</sup>

In its motion for default judgment, **PK Motors** requested its reasonable attorney's fees only as to its claim for

declaratory relief. In its memorandum, **PK Motors** requests leave to amend its motion for default judgment to include a request for attorney's fees under section 68.065, Florida Statutes. That section specifically authorizes recovery of attorney's fees and costs incurred in collecting a dishonored check. Fla. Stat. § 68.065(5) (2006). The Court grants **PK Motors'** request to amend its motion for default judgment on this narrow issue. Accordingly, the Court grants **PK Motors** its attorney's fees and costs. **PK Motors** attached to its motion for default judgment an affidavit averring that it incurred \$1,540 in attorney's fees and \$710.18 in costs. The Court awards **PK Motors** this amount.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

1. The Motion for Default Judgment (Doc. # 12), filed by **PK Motors** on January 23, 2007, is GRANTED to the extent stated below.
2. **PK Motors** shall have a personal money judgment against the Pages in the amount of \$136,232.01. This amount includes the face amount of the check, \$127,885.38; \$6,096.45 in interest; \$1,540 in attorney's fees; and \$710.18 in costs.
3. The Clerk shall enter a judgment accordingly.

DONE and ORDERED.

[1] Paragraph (d), inapplicable in this case, provides a rule governing cases where the instrument is unavailable or where the obligee is not the person entitled to enforce the instrument.

[2] The bankruptcy court explained the logical import of the choice between enforcing a check and enforcing the underlying obligation for which the check was given:

It perhaps simplifies an understanding of this election if one keeps in mind that the check constitutes a payment of the underlying obligation. If the creditor elects to proceed on the check, the underlying obligation has been satisfied. On the other hand, if the creditor elects to reject the dishonored check as payment, then the creditor is entitled to enforce the unpaid underlying obligation. The creditor cannot both accept payment and reject payment.

Id.

[3] Of course, **PK Motors** may be able to look to the two Cadillacs in satisfaction of its personal money judgment. See Fla. Stat. § 56.061 (2006) ("Land and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution.")

[4] This amount represents 5% annual interest on \$127,885.38 over 348 days.

Save trees - read court opinions online on Google Scholar.

**EXHIBIT "I"**

77Y-261-4769

On to the other Washington  
Plaintiff's Bank of America  
as Plaintiff  
By [Signature]

L - VICTIM OF MURKIN - WALTER RICHARD LARSON  
H - DEPOSITORY ACCOUNT - DEPOSITORY ACCOUNT  
E - ACCT # 8565 - ACCT # 8565

BANK OF AMERICA NO 1 RT  
ATM 8565 8565 8565 8565 8565 8565  
8565 8565 8565 8565 8565 8565

**EXHIBIT "J"**

Case 1:16-cv-03941-UA Document 2 Filed 05/24/16 Page 31 of 48

*Exhibit D*

VOL 3876 PG 250 003822

PREPARED BY AND AFTER  
RECORDING MAIL TO:

Washington Mutual Bank, FA  
C/O First Pacific Title  
12611 FAIR DRIVE - MS1550PCA  
GARDEN GROVE, CA 92241

SPACE ABOVE THIS LINE FOR RECORDING DATA

**Washington Mutual**

**OPEN-END MORTGAGE**

LOAN NO.: 000000

THIS MORTGAGE ("Security Instrument") is given on March 22, 2000.  
The mortgagor is DORMUM LIMTED LIABILITY COMPANY.

("Borrower"). This Security Instrument is given to Washington Mutual Bank, FA, which is organized and existing under the laws of USA, and whose address is 400 East Main Street Stockton, CA 95209 ("Lender"). Borrower owes Lender the principal sum of Three Hundred Eight Thousand \$ 30,000.

Dollars (U.S. 308,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on April 1, 2030. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security instrument and the Note. For this purpose, Borrower in consideration of this debt does hereby grant and convey to Lender and Lender's successors and assigns the following described property located in Fairfield County, Connecticut:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

which has the address of 21 RIDGEWOOD DRIVE,  
NORWALK, Connecticut 06853 ("Property Address");  
CONNECTICUT Single Family-Family Max/Predilex One UNIFORM INSTRUMENT Form 2007 6/90  
2007-02-07 Page 1 of 8

**EXHIBIT D**

Case 1:16-cv-03941-UA Document 2 Filed 05/24/16 Page 32 of 48

**TO HAVE AND TO HOLD** this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, attain priority over this Security Instrument as a lien on the Property: (a) yearly taxes and assessments which may payments or ground rents on the Property, if any; (b) yearly leasehold premiums; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of Paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender amounts permitted to be held by applicable law, Lender shall account to Borrower excess Funds in accordance with the requirements of applicable law. If the of the held by Lender at any time is not sufficient to pay the Escrow items when due, notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender promptly refund to Borrower any Funds held by Lender. If, under Paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured

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by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under Paragraphs 1 and 2 shall be applied first, to any prepayment charges due under the Note; second, to amounts payable under Paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in Paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of that giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with Paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums accrued by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of the payments. If under Paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the

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**Property to deteriorate, or commit waste on the Property.** Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by the Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of this lease. If Borrower acquires title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Paragraph 7, Lender does not have to do so.

Lender does not have to do so.

Any amounts disbursed by Lender under this Paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**B. Mortgage Insurance.** If Lender requires mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain those payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

**9. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection

**10. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or as a result of any condemnation or other taking of any part of the Property, shall be paid to the Seller.

or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.  
In the event of a total taking of the Property, the proceeds shall be applied to the sums  
assured by this Security Instrument, whether or not then due, with any excess paid to  
Borrower. In the event of a partial taking of the Property in which the fair market value of the  
Property immediately before the taking is equal to or greater than the amount of the sum  
secured by this Security Instrument immediately before the taking, unless Borrower and Lender  
otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by

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the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums due are less than due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not A Waiver. Extension of the time for payment or modification or amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finely interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as partial prepayment without any prepayment charge under the Note.

14. Notice. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) 5 days (or such other period, as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. These conditions are that Borrower: (b) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees; and (d) takes such action as Lender may reasonably require to ensure that the loan of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with Paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payment should be made. The notice will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

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**21. Acceleration Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and foreclosure or sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in court the non-existence of a default or any other defense of Borrower to acceleration and foreclosure or sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke any of the remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

**22. Release.** Upon payment and discharge of all sums secured by this Security Instrument, this Security Instrument shall become null and void and Lender shall release this Security Instrument to Borrower. Borrower shall pay any recording costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

**23. Waivers.** Borrower waives all rights of homestead exemption in, and statutory redemption of, the Property and all right of appraisement of the Property and relinquishes all rights of curtesy and dower in the Property.

**24. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable [line(s)]]

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Other(s) (specify)		

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

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LOAN NO. [REDACTED] 5099-0

X ~~LAWYER OR ATTORNEY~~ WITNESS

X ~~JUDITH S. GERBER~~ WITNESS

X ~~RICHARD HOLT~~

(Space Below This Line For Acknowledgment)

STATE OF CONNECTICUT, Stamford  
County of Stamford

The foregoing instrument was acknowledged before me this 3/23/2000  
by RICHARD HOLT (date)

(person acknowledging)

(Official Seal)

Commissioner of the Superior Court  
Notary Public, State of Connecticut

My Commission expires:

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SCHEDULE A

All had certain lot of land, with the buildings thereon, situated in the City of Norwalk in the County of Fairfield and State of Connecticut, known and designated as lot number fifteen (15) on a certain map entitled "Map of Incorporated of Norwalk, Conn., Ct." now on file in the office of the Town Clerk of said Norwalk and numbered twenty-two hundred and thirty-one (221), reference thereto being had; said lot being bounded as follows:

NORTHERLY: 60 feet, more or less, by land now or formerly of Alfred S. Cury and Arlene R. Cury;  
EASTERLY: 173 feet, more or less, by land now or formerly of Alice D. Marshall and Dorothy Magyar;  
SOUTHERLY: 60 feet, more or less, by Ridgewood Avenue; and  
WESTERLY: 174 feet, more or less, by land now or formerly of Arnold B. Aptmon and Gladys E. Aptmon.

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ADJUSTABLE RATE RIDER  
(FHLB Index - Payment and Rate Caps)

59-0

THIS ADJUSTABLE RATE RIDER is made this 22nd day of March, 2000, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Washington Mutual Bank, WA (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

23 REDGROVE DRIVE, NORMAN, OK 73069  
(Property Address)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125% OF THE ORIGINAL AMOUNT (OR \$ 305,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

Interest will be charged on unpaid principal until the full amount has been paid. I will pay interest at a yearly rate of 4.95%%. The interest rate I will pay will change in accordance with Section 4 of the Note. The interest rate required by Section 2 and Section 4 of the Note is the rate I will pay both before and after any default described in Section 7(B) of the Note.

The Note provides for changes in the interest rate and the monthly payments as follows:

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**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(A) Change Dates

The interest rate I will pay may further change on the first day of May 2000, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the monthly weighted average cost of funds for Eleventh District savings institutions as announced by the Federal Home Loan Bank of San Francisco (the "11th District Monthly Weighted Average Cost of Funds Index"). The most recent Index figure available on each Interest Rate Change Date is called the "Current Index".

Information on the 11th District Monthly Weighted Average Cost of Funds Index may be obtained by writing to the Federal Home Loan Bank at P.O. Box 7948, San Francisco, California 94120, Attention: Public Information Department; or by calling the Federal Home Loan Bank at 1-415-616-2600.

If the Index is no longer available, the Note Holder will use the new Index as if it were the Index. The new Index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (G.13)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recent available twelve months and dividing by 12. This information may be available in your library, or you may write to the Board of Governors, Publication Services Washington D.C. 20551. The most recent figure available 15 days prior to each Interest Rate Change Date will be the Current Index. If the new Index is no longer available, the Note Holder will choose an alternate Index which is based upon information comparable to the new Index. The Note Holder will give me notice as to this choice.

(C) Interest Rate Change Calculation

Before each Change Date, the Note Holder will calculate my new interest rate by adding Three & One-Tenth percentage points (3.10% "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. If a new Index is selected, the new Margin will be the difference between the average of the Index for the most recent three year period which ends

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On the last date the Index was available plus the then effective Margin and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). If an alternate Index is selected, the new Margin will be the difference between the average of the new Index for the most recent three year period which ends on that last date the new Index was available plus the then effective Margin and the average of the alternate Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). In either case, this difference will be rounded to the next higher 1/8 of 1%.

(B) Interest Rate Limit

My interest rate will never be greater than 11.930 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first Interest rate Change Date, the maximum interest rate will be the higher of the Cap or 8 percentage points greater than the interest rate in effect at the time of such sale or transfer.

(C) Payment Change Dates

Effective every year commencing May 1, 2002, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

(D) Monthly Payment Limitations

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying.

(E) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the

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monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

(M) Limit on My Unpaid Principal; Increased Monthly Payment  
My unpaid principal can never exceed a maximum amount equal to 125% of the principal amount originally borrowed. In the event my unpaid principal would otherwise exceed that 125% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

(I) Required Full Monthly Payment  
On the FIFTIETH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

(J) Notice of Changes  
The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

(K) Failure to Make Adjustments  
If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal."

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER  
Covenant 17 of the Security Instrument is amended to read as follows:

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**Transfer of the Property or a Beneficial Interest in Borrower.**

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) the request to assume is made after one year following recordation of the Deed of Trust, (b) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee or if a new loan were being made to the transferee; (c) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Agreement or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (e) payment of Assumption Fee if requested by Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 6 percentage points greater than the interest rate in effect as the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written assumption agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute an document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.

RICHARD HOLT

20042 00-00

Page 6 of 8

Received for Record March 27,

A.D. 2000 at 8:31 A.

M, and recorded by

*John J. Fitzgerald*  
John Clark

**EXHIBIT "K"**

DOC53 131125 reference 2 of 6.

**Settlement Statement  
Optional Form for  
Transactions without Sellers**

U.S. Department of Housing  
and Urban Development

OMB Approved No. 2502-0491

Name & Address of Borrower:  
Dorsum Nemus Limited Liability Company  
23 Ridgewood Road  
Norwalk, CT 06853

Name & Address of Lender:  
Washington Mutual Bank, F.A.  
P.O. Box 25308  
Santa Ana, CA 92799

Property Location: (if different from above)  
23 Ridgewood Road, Norwalk, CT 06853

Settlement Agent:  
Natalia S. Kerler

HUD1

BEST AVAILABLE DOCUMENT

Place of Settlement:  
1 Washington Ave, Sandy Hook, CT 06482

Loan Number: 2383-003596059

Settlement Date: March 22, 2000

<u>L. Settlement Charges</u>		<u>M. Disbursement to Others</u>	
800. Items Payable in Connection with Loan		1501. Payoff of first mtg loan Webster	
801. Loan Origination Fee: 2.0 % to Northeast Mortgage	6,160.00	Bank	78,069.46
802. Loan Discount: Washington Mutual Bank, F.A.		1502. Payoff of second mtg loan HSBC	
803. Appraisal fee to		Mtg	49,727.08
804. Credit report to		1503.	
805. Lender's inspection fee to		1504.	
806. Mortgage insurance application fee to		1505.	
807. Underwriting fee to Washington Mutual	300.00	1506.	
808. Tax registration to Lereta Corp	75.00		
809. Flood Determination to Lereta Corp	16.00		
810. Wire Transfer fee to Washington Mutual	35.00		
811. Lender Loan fee to Broker	\$6,160.00 P.O.C.		
900. Items Required by Lender to be Paid in Advance		1507.	
901. Interest from 3/27/2000 to 4/1/2000 @ \$41.66 / day	208.30	1508.	
902. Mortgage insurance premium for mos. to		1509.	
903. Hazard insurance premium for yrs. to		1510.	
904. Flood insurance premium for yrs. to		1511.	
905.		1512.	
1000. Reserves Deposited with Lender		1513.	
1001. Hazard insurance		1514.	
1002. Mortgage insurance			
1003. City property taxes			
1004. County property taxes			
1005. Annual assessments			
1006. Flood insurance			
1007.			
1008. Aggregate Accounting Adjustment	0.00		
1100. Title Charges			
1101. Settlement or closing fee to Natalia S. Kerler	495.00	1515.	
1102. Abstract or title search to			
1103. Title examination to Law Office of Natalia Kerler	152.00	1520. TOTAL DISBURSED (enter on Line 1603)	\$127,796.54
1104. Title insurance binder to			
1105. Document preparation to			
1106. Notary fees to			
1107. Attorney's fees to (includes above items Numbers: )			
1108. Title insurance to CATIC (includes above items Numbers: )	1,002.00		
1109. Lender's coverage \$1,002.00 (\$308,000.00 coverage)			
1110. Owner's coverage			
1111.			
1112. (Review title for insurability, clear underwriting objections,			
1200. Government Recording and Transfer Charges		<u>M. NET SETTLEMENT</u>	
1201. Recording fees: Deed \$0.00 Mortgage \$80.00 Release \$20.00	100.00	1600. Loan Amount	308,000.00
1202. City/county tax/stamps:		1601. Plus Cash/Check from Borrower	0.00
1203. State tax/stamps:		1602. Minus Total Settlement Charges (Line 1400)	8,568.30
1204.		1603. Minus Total Disbursements to Others (Line 1520)	127,796.54
1205.		1604. Equals disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$171,835.16
1300. Additional Settlement Charges			
1301. Survey to			
1302. Pest inspection to			
1303. Airborne Express for Payoff	25.00		
1304.			
1305.			
1306.			
1307.			
1400. Total Settlement Charges (enter on Line 1602)	\$8,568.30		

Borrower(s) Signature(s):

R. 1464000 4/10/

Date: 3/22/2000

Settlement Agent:

Natalia S. Kerler

Date:

**EXHIBIT "L"**

Supplement to COMMERCIAL Letter 7/13/04  
Loan No. 1955-6

1. Requests of "Borrower" to be determined on initial date of loan closing - to be confirmed or denied. Requests to be denied if:  
a. Original loan application and credit documents to be less than 120 days old at closing. Original documents required prior to ordering closing documents.  
b. Broker fees are to be paid directly to the broker and deducted on the Broker Fee Information Statement and/or Addendum to Instructions. The amount paid broker fee (paid ahead premium) is to be reflected as NDC to the broker on the NSC, no late charge fees without lending approval.

2. Requests of preliminary Title Report

3. Requests of title insurance to be converted to regular coverage as follows:

a. At closing, you must provide the bank with evidence of hazard insurance coverage in the amount of the amount equal to the lesser of: 1) replacement value of the improvements, or 2) the amount of the month's loan.

b. An acceptable collateral appraisal must be submitted prior to closing and any conditions or exceptions must be satisfactorily met and completed with a

4. Borrower to sign typed application and all addenda.

100% LTV

**EXHIBIT "M"**

NORTHEAST MORTGAGE CORPORATION

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Renters	Co-Renters	Total	Monthly Housing Expenses	Pieces	Prorated
Gross Inst. Income -	\$ 15000.00		\$ 15000.00	Rent	1	
Dividends				First Mortgage (P & I)	1120	\$ 1906.71
Savings				Other Financing (P & I)	1310	
Commissions				Home Insurance	150	50
Demand Deposits				Real Estate Taxes	319	219
Net Rental Income				Alimony/Spouse		
Other Income (List the nature of the income and the amount received during the month)				Homeowner Alm. Due		
Total	\$ 15000.00		\$ 15000.00	Other		
				Total	\$ 2859	\$ 2415.71

\* See Employment Statement(s) may be required to provide additional documentation such as tax returns and financial statements.

Debt(s) Other Income Notice: Attorney, child support, or separate maintenance Income need not be reported if the Debtor(s) or Ex-Borrower(s) does/did not have it considered for repaying this loan.

DEC:		Monthly Amount
		\$ 0
		\$ 0
		\$ 0

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully completed on a joint basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, the Statement and supporting schedules must be completed about that spouse also.

Completed  Jointly  Not Jointly

ASSETS	Cash or Market Value	Liabilities and Pledged Assets: List the creditor's name, address and account number for all outstanding debts including subordinate loans, revolving charge accounts, etc. Itemize unpaid amounts due to the creditor. (If the creditor is a partnership, the name of the individual partner will be sufficient unless one of the real estate owned or upon refinancing of the subject property.)	Monthly Paymt & Min. Amt. Left to Pay	Unpaid Balance
Description		Name and address of Company	\$ Paymt/Alm.	
Cash deposit toward purchase held by:	\$	Fond	388	\$ 15000
List checking and savings accounts below		Acct. no. RECALIBORSP08		
Name and address of Bank, S & L or Credit Union		Name and address of Company	\$ Paymt/Alm.	
CITIC		CITIBANK	389	7784
Acct. no. 511-500191-85	\$ 25109	Acct. no. SECT1295870		
Name and address of Bank, S & L or Credit Union		Name and address of Company	\$ Paymt/Alm.	
		CITIBANK	120	4437
Acct. no.	\$	Acct. no. 76833945100		
Name and address of Bank, S & L or Credit Union		Name and address of Company	\$ Paymt/Alm.	
LHR		LHR	102	3401
Acct. no. 02657900		Name and address of Company	\$ Paymt/Alm.	
Name and address of Bank, S & L or Credit Union		CITIBANK	70	3381
		Acct. no. 592038031017		
Acct. no.		Name and address of Company	\$ Paymt/Alm.	
Bank of Amer		BANK OF Amer.	48	2468
Life Insurance net cash value	\$	Acct. no. 033600653017		
Acc. amount \$		Name and address of Company	\$ Paymt/Alm.	
Subtotal Liquid Assets	\$ 175,109	SEE PG 4	2692	132,441
Net value owned (less market value from schedule at road value number)	\$ 570,000	Acct. no.		
Vested interest in retirement fund	\$	Address/Child Support/Separate Maintenance Payments Owed to:	\$	
Net worth of Discrepancy listed in your previous statement(s)	\$	Job Related Expense (child care, union dues, etc.)	\$	
Automobiles owned (make and year)	\$	Total Monthly Payments	\$ 3809	
Other Assets General	\$	New Home (Purchase Price) Initials: <u>      </u>	\$ 570,091	Total Liabilities b. \$ 160,862
Percolate Furniture Antiques	100,000 75700 100,000	Page 2 of 2		
Total Assets a.	\$ 940,579	INITIALS: <u>      </u>		

Printed on The Laser Handler from Comstar Baltimore, Inc. 1400 N. 370 1700

Form 1003 Rev. 10/97



Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower: <u>Richard L. Burt</u>	Agency File Number:
	Co-Borrower:	Under Case Number:

CITIBANK 412800268102 44 2114  
CHASE 4258302190783675 29 , 456  
AEX 2113300 68 1357  
BROOKLYN 1011724019 136 688

I/we, fully understand that it is a Federal offense punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Signature:	Date: _____	Co-Borrower's Signature:	Date: _____
<small>Fannie Mae Form 1002Rev. 10/92 (Amended)</small>	<small>Printed by The Loan Master from Calltra Software, Inc. (408) 370-1700</small>	<small>Addendum to 1002</small>	<small>Fannie Mae Form 1002Rev. 10/92 (Amended)</small>

DOC7 131210 reference 6 of 37.

## ORTHEAST MORTGAGE CORPORATION Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when  the income or assets of a person other than the "Borrower" (including Borrower's spouse) will be used as a basis for loan qualification or  the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

### I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	<input type="checkbox"/> VA	<input checked="" type="checkbox"/> Conventional	<input type="checkbox"/> Other:	Agency Case Number	Lender Case Number
	<input type="checkbox"/> FHA	<input type="checkbox"/> FmHA	4.95		
Amount	\$308,000	Interest Rate	6.5%	No. of Months	360
				Amortization Type:	<input type="checkbox"/> Fixed Rate
					<input type="checkbox"/> GPM
					<input checked="" type="checkbox"/> ARM (type): <u>COF</u>

### II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state & zip code)	23 RIDGEWOOD DR., NORWALK, CT. 06853	No. of Units
Legal Description of Subject Property (attach description if necessary)		Year Built

Purpose of Loan	<input type="checkbox"/> Purchased	<input type="checkbox"/> Construction	<input type="checkbox"/> Other (explain):	Property will be:
	<input checked="" type="checkbox"/> Refinance	<input type="checkbox"/> Construction-Permanent		<input checked="" type="checkbox"/> Primary Residence
				<input type="checkbox"/> Secondary Residence
				<input type="checkbox"/> Investor

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of lot	(b) Cost of Improvements	Total (a + b)
	\$	\$	\$	\$	\$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements
1984	\$144,000	\$126,317	HOME IMPROV.	<input type="checkbox"/> made <input checked="" type="checkbox"/> to be <u>Trimming &amp; Remove</u> Cost: \$150,000

Title will be held in what Name(s)

RICHARD HKT

Manner in which Title will be held

Estate will be held in:

Fee Simple

Leasehold (show expiration)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

Equity From Subject Property

### Borrower

### III. BORROWER INFORMATION

### Co-Borrower

Borrower's Name (include Jr. or Sr. if applicable)

RICHARD HKT

Co-Borrower's Name (include Jr. or Sr. if applicable)

Social Security Number Home Phone (incl. area code) Age Yrs. School

568-38-9955 203-838-7004 54 18

<input type="checkbox"/> Married	<input type="checkbox"/> Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower) no. ages	<input type="checkbox"/> Married	<input type="checkbox"/> Unmarried, (include single, divorced, widowed)	Dependents (not listed by Borrower) no. ages
<input type="checkbox"/> Separated		<u>01</u>	<input type="checkbox"/> Separated		

Present Address (street, city, state, zip code)

Own  Rent  
No. Yrs: 12

Present Address (street, city, state, zip code)

Own  Rent  
No. Yrs:

23 RIDGEWOOD DR.  
NORWALK, CT. 06853

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, zip code)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs:	Former Address (street, city, state, zip code)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs:
--	--	--	--

Former Address (street, city, state, zip code)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs:	Former Address (street, city, state, zip code)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs:
--	--	--	--

Borrower	IV. EMPLOYMENT INFORMATION	Co-Borrower
----------	----------------------------	-------------

Name & Address of Employer  Self Employed Years on this job: 18

<u>CALIFORNIA DATA</u> For 300 Page 6 of 871 St. <u>11/11/17</u>	Years employed in this line of work/profession <u>35</u>	<input type="checkbox"/> Self Employed Years on this job: Years employ in this line of work/profession
--	---	---

Position/Titl/Type of Business Business Phone (incl. area code) Position/Titl/Type of Business Business Phone (incl. area code)

DOC7 131210 reference 7 of 37.

NORTHEAST MORTGAGE CORPORATION

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income	\$ 14000	\$	\$ 14000	Rent	\$	
Overtime				First Mortgage (P & I)	\$ 1080	\$ 1946
Bonuses				Other Financing (P & I)	\$ 1310	
Commissions				Hazard Insurance	\$ 50	\$ 50
Dividends/Interest				Real Estate Taxes	\$ 19	\$ 19
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in describe other income, below)				Homeowner Assn. Dues		
Total	\$ 14000	\$	\$ 14000	Other:		
				Total	\$ 2859	\$ 2415

\* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

B/C	Describe Other Income Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) doesn't choose to have it considered for repaying this loan.	Monthly Amou
		\$
		\$
		\$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed  Jointly  N

ASSETS	Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.	Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Description				
Cash deposit toward purchase held by:	\$		\$ Payt./Mos.	\$
<b>List checking and savings accounts below</b>		<b>LIABILITIES</b>		
Name and address of Bank, S & L, or Credit Union		Name and address of Company		
<i>CITIBANK</i>		<i>FONDS</i>	<i>388</i>	<i>150</i>
Acct. no. 381-5001141-85	\$ 25109	Acct. no. BICAL180KSP08		
Name and address of Bank, S & L, or Credit Union		Name and address of Company		
		<i>CITIBANK</i>	<i>389</i>	<i>77</i>
Acct. no.	\$	Acct. no. 56833995520		
Name and address of Bank, S & L, or Credit Union		Name and address of Company		
		<i>CITIBANK</i>	<i>120</i>	<i>443</i>
Acct. no.	\$	Acct. no. 56833995520		
Name and address of Bank, S & L, or Credit Union		Name and address of Company		
		<i>CHER</i>	<i>102</i>	<i>340</i>
Acct. no.	\$	Acct. no. 01669900		
Name and address of Bank, S & L, or Credit Union		Name and address of Company		
		<i>CITIBANK</i>	<i>20</i>	<i>338</i>
Acct. no.	\$	Acct. no. 542018031012		
Stocks & Bonds (Company name/number & description)	\$	Name and address of Company		
<i>Calma, DATA " " SWEDEL</i>	<i>50,000 100,000</i>	<i>BANK OF Amer.</i>		
Footnote: Prepaid/cash/contingency fees amount: \$	\$			
Sustained Liquid Assets	\$			

DOC7 131210 reference 8 of 37.

NORTHEAST MORTGAGE CORPORATION

VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental In
23 RIDGENWOOD	SFR	\$ 570,000	\$ 126,717	\$	\$ 2390	\$ 469	\$
Totals		\$ 570,000	\$ 126,717	\$	\$ 2390	\$ 469	\$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	\$	
b. Alterations, improvements, repairs		
c. Land (if acquired separately)		
d. Refinance (incl. debts to be paid off)	126,317	
e. Estimated prepaid items	2268.33	
f. Estimated closing costs	8250.50	
g. PMI, MIP, Funding Fee paid in cash		
h. Discount (if Borrower will pay)		
i. Total costs (add items a through h)	137,335.83	
j. Subordinate financing		
k. Borrower's closing costs paid by Seller		
l. Other Credits (explain)		
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	308,000	
n. PMI, MIP, Funding Fee financed		
o. Loan amount (add m & n)	308,000	
p. Cash from l to Borrower (subtract j, k & o from i)	770,664	

VIII. DECLARATIONS

If you answer "Yes" to any questions a through l, please use continuation sheet for explanation.	Borrower	Co-B
a. Are there any outstanding judgments against you?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Have you been declared bankrupt within the past 7 years?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Are you a party to a lawsuit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title or judgment? (This would include such loans as home mortgage loans, SBA loan improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of FHA or VA case number, if any, and reasons for the action.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Are you obligated to pay alimony, child support, or separate maintenance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Is any part of the down payment borrowed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i. Are you a co-maker or endorser on a note?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j. Are you a U.S. citizen?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
k. Are you a permanent resident alien?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m. Have you had an ownership interest in a property in the last three years?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(1) What type of property did you own - principal residence (PR), second home (SH), or investment property (IP)?		
(2) How did you hold title to the home - solely by yourself (SI), jointly with your spouse (SP), or jointly with another person (JO)?		

IX. ACKNOWLEDGMENT AND AGREEMENT

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; property will not be used for any illegal or prohibited purpose or use; (2) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupancy of property will be indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information in the application and have a continuing obligation to amend and/or supplement the information provided in this application if any material facts which we have represented herein should change prior to closing; (7) in the event my/hour payments on the loan indicated in this application become delinquent, the Lender, its successors and assigns, may, in addition to all their other rights and remedies, report my/hour name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to an agent, successor or assign of the Lender with prior notice to me; Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

**Right to Receive Copy of Appraisal.** We have the right to a copy of the appraisal report used in connection with this application for credit. To obtain a copy, we must send written request at the mailing address Lender has provided. Lender must hear from us/no later than 90 days after Lender notifies us about the action taken on this application, or we v this application.

**Certification:** We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors or assigns, insurers and/or persons who may suffer any loss due to reliance upon any misrepresentation which we have made on this application.

Footnote: *131210*  
 Borrower's Signature  Date \_\_\_\_\_  
 Co-Borrower's Signature \_\_\_\_\_ Date \_\_\_\_\_

DOC7 131210 reference 9 of 37.

**Continuation Sheet/Residential Loan Application**

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark <b>B</b> for Borrower or <b>C</b> for Co-Borrower.	Borrower: <i>Richard Holt</i>	Agency Case Number:
	Co-Borrower:	Lender Case Number:

CITIBANK 412800268102 44 2114

CHASE 4258302190783675 29 , 456

ALEX 2113300 68 · 1357

Brooks Bros. 1011724019 136 688

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**NORTHEAST MORTGAGE, LLC**  
**Uniform Residential Loan Application**

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when  the income or assets of a person other than the "Borrower" (including Borrower's spouse) will be used as a basis for loan qualification or  the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

**I. TYPE OF MORTGAGE AND TERMS OF LOAN**

Mortgage Applied for:	<input type="checkbox"/> VR <input type="checkbox"/> FHA <input type="checkbox"/> FmHA	Conventional	<input type="checkbox"/> Other:	Agency Case Number	Lender Case Number
Amount	\$ 308000	Interest Rate 6.5 %	No. of Months 360	Amortization Type: <input type="checkbox"/> Fixed Rate <input checked="" type="checkbox"/> GPM <input type="checkbox"/> Other (explain): ARM (type): COFI ARM	

**II. PROPERTY INFORMATION AND PURPOSE OF LOAN**

Subject Property Address (street, city, state & zip code)	23 RIDGEWOOD DR, NORWALK, FAIRFIELD CT 06853	No. of Units 1
Legal Description of Subject Property (attach description if necessary)		Year Built 1988
VOL 3257 PG 234		

Purpose of Loan <input checked="" type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain): <input checked="" type="checkbox"/> Refinance <input type="checkbox"/> Construction-Permanent	Property will be: <input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment
---	---

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost \$	Amount Existing Liens \$	(a) Present Value of lot \$	(b) Cost of Improvements \$	Total (a + b) \$
-------------------	---------------------	-----------------------------	--------------------------------	--------------------------------	---------------------

Complete this line if this is a refinance loan.

Year Acquired	Original Cost \$ 144000	Amount Existing Liens \$ 126317	Purpose of Refinance 04 Home Improvement	Describe Improvements TRIMMING & REMODELING	<input type="checkbox"/> made <input checked="" type="checkbox"/> to be made
---------------	----------------------------	------------------------------------	---	--	--

Title will be held in what Name(s) <b>RICHARD HOLT</b>	Manner in which Title will be held <b>Joint Tenancy</b>	Estate will be held in: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)
---	--	--

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

F4

**Equity from Subject Property**

Borrower <b>RICHARD HOLT</b>	<b>III. BORROWER INFORMATION</b>			Co-Borrower	
Borrower's Name (Include Jr. or Sr. if applicable)	Co-Borrower's Name (Include Jr. or Sr. if applicable)				
Social Security Number 568-33-9955	Home Phone (incl. area code) 203-838-7004	Age 18	Social Security Number	Home Phone (incl. area code)	
<input checked="" type="checkbox"/> Married <input type="checkbox"/> Separated	Unmarried (include single, divorced, widowed) no. 0 ages	<input type="checkbox"/> Married <input type="checkbox"/> Separated	Unmarried, include single, divorced, widowed no. ages	Age Yrs. Schoo	
Present Address (street, city, state, zip code) 23 RIDGEWOOD DR NORWALK, CT 06853	<input checked="" type="checkbox"/> Own No. Yrs: 12	Rent	Present Address (street, city, state, zip code)	<input type="checkbox"/> Own No. Yrs:	Rent

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, zip code)	<input type="checkbox"/> Own No. Yrs:	Former Address (street, city, state, zip code)	<input type="checkbox"/> Own No. Yrs:
--	--	--	--

Former Address (street, city, state, zip code)	<input type="checkbox"/> Own No. Yrs:	Former Address (street, city, state, zip code)	<input type="checkbox"/> Own No. Yrs:
--	--	--	--

Borrower <b>CENTRA DATA CORPORATION</b>	<b>IV. EMPLOYMENT INFORMATION</b>			Co-Borrower
Name & Address of Employer 244 W5TH ST NEW YORK, NY	<input checked="" type="checkbox"/> Self Employed Years on this job: 18	Years employed in this line of work/profession 35	Name & Address of Employer	<input type="checkbox"/> Self Employed Years on this job:

DOC7 131210 reference 11 of 37.

NORTHEAST MORTGAGE, LLC

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Paid/Refund	Proposed
Base Empl. Income	\$ 14000.00	\$	\$ 14000.00	Rent	\$	
Overtime				First Mortgage (P & I)	1080.00	\$ 1946.77
Bonuses				Other Financing (P & I)	1310.00	
Commissions				Hazard Insurance	50.00	50.00
Dividends/Interest				Real Estate Taxes	419.00	419.00
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income" below)				Homeowner Assn. Dues		
				Other:		
Total	\$ 14000.00	\$	\$ 14000.00	Total	\$ 2859.00	\$ 2415.77

\* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

B/C	Describe Other Income Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) doesn't choose to have it considered for repaying this loan.	Monthly Amount
		\$
		\$
		\$

#### VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed  Jointly  Not Joint

ASSETS	Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.	Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Description				
Cash deposit toward purchase held by:	\$			
<b>List checking and savings accounts below</b>				
Name and address of Bank, S & L, or Credit Union				
<b>CHASE</b>				
Acct. no. 391-5001141-85	\$ 25109	Name and address of Company FORD	\$ Payt./Mos. 388	\$ 15000
Name and address of Bank, S & L, or Credit Union		Acct. no. BKNT180KP08		
		Name and address of Company CITIBANK	\$ Payt./Mos. 389	\$ 7784
Acct. no.	\$	Acct. no. 56833995520		
Name and address of Bank, S & L, or Credit Union		Name and address of Company CITIBANK	\$ Payt./Mos. 120	\$ 4437
		Acct. no. 56833995520		
Acct. no.	\$	Name and address of Company AMEX	\$ Payt./Mos. 102	\$ 3401
Name and address of Bank, S & L, or Credit Union		Acct. no. 03669900		
		Name and address of Company CITIBANK	\$ Payt./Mos. 70	\$ 3381
Acct. no.	\$	Acct. no. S42418031012		
Stocks & Bonds (Company name/number)		Name and address of Company BANK OF AMERICA	\$ Payt./Mos. 48	\$ 2418
<b>CENTRA DATA</b>				
<b>CENTRA DATA SWEDEN</b>	50000 100000			
Life Insurance net cash value Face amount: \$	\$			
<b>Footer Page 11 of 37.</b>				
<b>Subtotal Liquid Assets</b>	<b>\$ 175109</b>			

Draft estate market value from

DQC7 131210 reference 12 of 37.

NORTHEAST MORTGAGE, LLC

## **VI. ASSETS AND LIABILITIES (cont.)**

**Schedule of Real Estate Owned** (If additional properties are owned, use continuation sheet.)

**List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):**

Akademie-Nachr.

**Customer Name:**

Account Number

**VII. DETAILS OF TRANSACTION**

a. Purchase price	\$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	126317.00
e. Estimated prepaid items	2268.33
f. Estimated closing costs	8750.50
g. PMI, MIP, Funding Fee paid in cash	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	137335.83
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	308000.00
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	308000.00
p. Cash from / to Borrower (subtract l, k, l & o from n)	-170664.17

## **VIII. DECLARATIONS**

Borrower		Co-Borrower	
Yes	No	Yes	No
<b>If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.</b>			
a.	Are there any outstanding judgments against you?		
b.	Have you been declared bankrupt within the past 7 years?		
c.	Have you had property foreclosed upon or given title or deed in See thereof in the last 7 years?		
d.	Are you a party to a lawsuit?		
e.	Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title, See of foreclosure, or judgment? This would include such loans as home mortgage loans, SBA loans, home Improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, fine obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender FHA or VA case number, if any, and reasons for the action.)		
f.	Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.		
g.	Are you obligated to pay alimony, child support, or separate maintenance?		
h.	Is any part of the down payment borrowed?		
i.	Are you a co-maker or endorser on a note?		
j.	Are you a U.S. citizen?		
	Are you a permanent resident alien?		
<b>k.</b>	<b>Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.</b>		
m.	Have you had an ownership interest in a property in the last three years?		
(1)	What type of Property did you own - - principal residence (PR), second home (SH), or investment property (IP)?		
(2)	How did you hold title to the home - - solely by yourself (S), Jointly with your spouse (SP), or jointly with another person (O)?		
	<b>PR</b>		
	<b>S</b>		

## **IX. ACKNOWLEDGMENT AND AGREEMENT**

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation or property will be indicated above; (5) verification or verification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information in the application and will have a continuing obligation to amend and/or supplement the information provided in this application if any material facts which have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred, assigned or sold by the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; if the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

**Right to Receive Copy of Appraisal.** We have the right to a copy of the appraisal report used in connection with this application for credit. To obtain a copy, we must send Lender written request at the mailing address Lender has provided. Lender must hear from us no later than 60 days after Lender notifies us about the action taken on this application, or we with this application.

**Certification:** I/we certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, its imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors or assigns, insurers and other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

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**Co-Borrower's Signature**

Date

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**Continuation Sheet/Residential Loan Application**

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark <b>B</b> for Borrower or <b>C</b> for Co-Borrower.	Borrower: <b>RICHARD HOLT</b>	Agency Case Number:
	Co-Borrower: <b>9914040</b>	Lender Case Number:

**LIABILITIES ADDENDUM**

Creditor's Name Address/City/State/Zipcode	Account Number	Payment To Pay	Months Left	Balance
CITIBANK	412800268102	44		2114
CHASE	4253302190783635	29		1456
AMEX	21113300	68		1357
BROOKS BROS	1011724019	136		688
EDDIE BAUER	7206882495	25		509
R.E. Loans: WEBSTER BANK	5039075519	*1080		*77925
HSBC	5478530823	*1310		*48392
<b>TOTAL:</b>		2692		132441

**EXHIBIT "N"**

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RETURN DATE: DECEMBER 30, 2008 : SUPERIOR COURT  
JPMORGAN CHASE BANK, NATIONAL : J.D. OF STAMFORD/NORWALK  
ASSOCIATION  
VS. : AT STAMFORD  
HOLT, RICHARD L. A/K/A HOLT. : DECEMBER 12, 2008  
RICHARD, ET AL

COMPLAINT

COUNT ONE – REFORMATION OF MORTGAGE:

1. On March 22, 2000, Richard L. Holt a/k/a Richard Holt owed Washington Mutual Bank, FA which became known as Washington Mutual Bank and is now known as JPMorgan Chase Bank, National Association \$308,000.00, as evidenced by a promissory note for said sum dated on said date, and payable to the order of Washington Mutual Bank, FA which became known as Washington Mutual Bank and is now known as JPMorgan Chase Bank, National Association with interest from said date, in monthly installments of principal and interest. A true and correct copy of said Note is attached as Exhibit C.
2. On said date, by a deed of that date, said Richard L. Holt a/k/a Richard Holt individually and on behalf of Dorsum Nemus Limited Liability Company a/k/a Dorsum Nemus Limited Liability Company, to secure said note, mortgaged to Washington Mutual Bank, FA which became known as Washington Mutual Bank and is now known as JPMorgan Chase Bank, National Association the premises known as 23 Ridgewood Drive, Norwalk,

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Connecticut, and described in Exhibit A attached hereto and made a part hereof. A true and correct copy of said Mortgage is attached as Exhibit D.

3. Said mortgage deed was recorded on the Norwalk Land Records on March 27, 2000 in Volume 3876 at Page 250.

4. By a Quit Claim Deed, dated September 16, 1996, Richard L. Holt and Lisbet M. Holt quit-claimed the fee interest in the above-referenced property to Dorsum Nemus Limited Liability Company, which Quit Claim Deed was recorded on September 17, 1996 in Volume 3257 at Page 234 of the Norwalk Land Records. A true and correct copy of said Quit-Claim Deed is attached as Exhibit B.

5. On or about March 22, 2000, said Dorsum Nemus Limited Liability Company resolved that said Limited Liability Company shall grant a mortgage to Washington Mutual Bank, F.A. to secure a \$308,000.00 loan and that Richard Holt was authorized to execute the mortgage, promissory note and documents required in connection with the mortgage loan transaction. A true and correct copy of said Certificate of Limited Liability Company Resolution is attached as Exhibit E.

6. Due to a scrivener's error at the closing of said mortgage loan, the above-referenced mortgage deed stated that the mortgagor was "Dorsum Nemus Limited Liability Company," instead of "Dorsum Nemus Limited Liability Company."

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7. The mortgage should be reformed to state the name of the mortgage to be "Dorsum Nemus Limited Liability Company."

**COUNT TWO:**

1-3. Paragraphs 1 through 3, inclusive of Count One are incorporated herein and alleged as Paragraphs 1 through 3, inclusive of Count Two.

4. The Plaintiff is the holder of said Note and Mortgage and the unpaid balance of said note is \$296,828.87, plus interest from August 1, 2005, late charges and collection costs have not been paid although due and payable.

5. Said note and mortgage are now in default by virtue of nonpayment of the installments of principal and interest due on September 1, 2005 and each and every month thereafter, and the Plaintiff has exercised its option to declare the entire balance of said note due and payable.

6. The following encumbrances of record upon the property sought to be foreclosed are prior in right to the Plaintiff's mortgage and are not affected by this action:

(a) Any taxes due the City of Norwalk that remain outstanding and properly perfected as of the date hereof pursuant to applicable law.

(b) Water Lien in favor of the City of Norwalk in the original principal amount of \$282.18 dated April 13, 2004 and recorded April 13, 2004 in Volume 5371 at Page

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199 of the Norwalk Land Records.

(c) Water Lien in favor of the City of Norwalk in the original principal amount of \$495.78 dated April 13, 2005 and recorded August 22, 2005 in Volume 5933 at Page 218 of the Norwalk Land Records.

(d) Water Lien in favor of the City of Norwalk in the original principal amount of \$901.66 dated September 25, 2006 and recorded September 25, 2006 in Volume 6330 at Page 1 of the Norwalk Land Records.

(e) Water Lien in favor of the City of Norwalk in the original principal amount of \$1,348.41 dated November 5, 2007 and recorded November 5, 2007 in Volume 6677 at Page 315 of the Norwalk Land Records.

(f) Water Lien in favor of the City of Norwalk in the original principal amount of \$1,723.93 dated November 5, 2008 and recorded November 5, 2008 in Volume 6892 at Page 101 of the Norwalk Land Records.

7. On the aforementioned piece of property, the following interests are claimed which are subsequent to Plaintiff's said mortgage: NONE

8. Upon information and belief, the Defendant, Dorsum Nemus Limited Liability Company is the owner of record and in possession of said premises.

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WHEREFORE, The Plaintiff claims:

AS TO COUNT ONE:

1. Reformation of the Mortgage; and
2. Such other relief and further equitable relief as may be appropriate.

AT TO COUNT TWO:

1. A foreclosure of said mortgage.
2. Immediate possession of the mortgaged premises.
3. A deficiency judgment. No deficiency will be sought against any person whose obligation under the subject promissory note has been heretofore or hereafter discharged in bankruptcy.
4. The appointment of a receiver to collect rents and profits accruing from the premises.
5. Reasonable attorney's fees and costs.
6. Such other relief and further equitable relief as may be required.

**NOTICE: A PERSON WHO IS UNEMPLOYED OR UNDER-EMPLOYED AND WHO HAS FOR A CONTINUOUS PERIOD OF AT LEAST TWO YEARS PRIOR TO THE COMMENCEMENT OF THIS FORECLOSURE ACTION OWNED AND OCCUPIED THE PROPERTY BEING FORECLOSED AS SUCH PERSON'S PRINCIPAL RESIDENCE, MAY BE ENTITLED TO CERTAIN RELIEF PROVISIONS UNDER SECTION 49-31d to 49-31i, INCLUSIVE, OF THE CONNECTICUT GENERAL STATUTES. YOU SHOULD CONSULT AN ATTORNEY TO DETERMINE YOUR RIGHTS UNDER THIS ACT.**

UNLESS YOU, WITHIN THIRTY DAYS AFTER RECEIPT OF THIS NOTICE, DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED TO BE VALID BY US. IF YOU NOTIFY US IN WRITING WITHIN THE THIRTY DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU (IF APPLICABLE) AND A COPY OF SUCH VERIFICATION OR JUDGMENT WILL BE MAILED TO YOU BY US. ALSO, UPON YOUR WRITTEN REQUEST WITHIN THE THIRTY DAY

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**PERIOD, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR. THE FACT THAT YOU HAVE THIRTY (30) DAYS TO INDICATE A DISPUTE WILL NOT PREVENT US FROM FILING SUIT WITHIN THAT TIME.**

**THE LAW FIRM OF BENDETT & McHUGH, P.C. IS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE. IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY, THIS CORRESPONDENCE IS NOT AND SHOULD NOT BE CONSTRUED TO BE AN ATTEMPT TO COLLECT A DEBT, BUT ONLY ENFORCEMENT OF A LIEN AGAINST PROPERTY.**

This action is within jurisdiction of the Superior Court.

Dated at Farmington, Connecticut, this 12<sup>th</sup> day of December, 2008.

THE PLAINTIFF,  
JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

  
By \_\_\_\_\_  
David F. Borino  
Bendett & McHugh, P.C.  
Its Attorney  
160 Farmington Avenue  
Farmington, CT 06032  
(860) 677-2868  
Juris No. 102892

**EXHIBIT "O"**



BRIAN D. RICH 860 297-4698 rich@halloransage.com

December 12, 2013

**VIA FAX @ (203) 348-8092**

Larry F. Ginsberg, Esq.  
706 Bedford Street  
Stamford, CT 06901

Re: **JPMorgan Chase Bank, N.A. v. Richard Holt, et al**  
Loan No. **60590**  
Our File No. **13947.0093**

Dear Larry:

In a final effort to resolve the purported outstanding discovery issues raised by your client in this matter, this correspondence follows up on the court ordered "meet and confer" following the scheduled trial appearance before Judge Mottolese on December 3, 2013 which modified Judge Mintz's order to require the parties to work in good faith to resolve the outstanding discovery disputes and resolve the document production issues as they relate to this loan. In that regard, without waiving any and all rights, express or implied, I offer the following:

- You have requested page 7 of the "Consolidated default log;" we have no record of this page;
- You have requested Schedule 3.1 of the September 26, 2008 Purchase & Assumption Agreement; we have no documentation of such a schedule;
- We have previously confirmed, and confirm again, that this is a Chase loan; there is thus no documentation relating to any investor on the loan;
- We have no record of the requested "screen dumps;"
- We previously provided a payoff statement, per your request;
- Please see the requested escrow account statement attached;
- We previously produced the files relating to the origination of the loan in which the Plaintiff has in its possession, including the pertinent disclosures;

December 12, 2013  
Page 2

- Any records of the SEC, OCC and/or any other governmental agency should be requested through the appropriate agency;
- We are unaware of any pooling and servicing agreement relating to this loan;
- We have no "electronic tracking information" as you have requested it;
- We have no further documents to be produced pursuant to your request for "LSAM" documents;
- We are unaware of the "policies and manuals" relating to the subject loan;
- We have previously produced the Purchase & Assumption Agreement relating to the assumption of WaMu assets by JPMC, but are not aware of any further documentation to be produced pursuant to your request for further communications relating to this loan;
- We are unaware of any consent decrees relating to this loan and, therefore, have nothing to produce in this regard;
- In addition to being objectionable, we are unaware of any documents relating to this loan pursuant to your request for "All documents which relate to any purported forgeries and/or robo-signing alleged against Chase or WaMu, including deposition transcripts and specifically relating to Cynthia Reilly, Margaret Dalton and Florida Munoz;"
- In addition to being objectionable, we are unaware of any documents relating to this loan pursuant to your request for "a listing of all Chase robosigners;"
- We cannot confirm any information listed on the SEC website, which is outside of the control of the Plaintiff;
- This is not a Fannie Mae loan;
- We cannot confirm any "monies received by WaMu" relating to the loan or monies received by WaMu for the assumption of assets;
- Copies of insurance policies are attached.

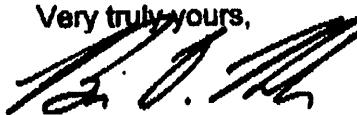
Responsive documentation is attached, as detailed above. Please note that your client, Dorsum Nemus, continue to remain in default of its discovery obligations in failing to produce a knowledgeable corporate witness, despite numerous requests. If Dorsum Nemus does not produce an appropriate witness for deposition forthwith, we will ask the Court for an immediate entry of default and/or take any and all necessary action to

December 12, 2013  
Page 3

proceed with the prompt disposal of this litigation as soon as possible. In that regard, I look forward to your timely response.

Moreover, I have yet to receive any response to my correspondence of last week with regard to alternate counsel appearing on behalf of Dorsum Nemus appearing in this case. Please advise promptly so that we can hopefully avert raising the issue before Judge Mintz at Thursday's status conference.

Very truly yours,



Brian D. Rich

BDR:maw  
Enclosures

cc: Richard Holt via hand delivery.

**NOTICE UNDER THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. 1692,  
ET SEQ.**

THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

**EXHIBIT "P"**

0590 FOR TRACKING ZLT A01/006 06/05/03 14:05:31  
R HOLT L: FAB: R: 04/01/02 TYPE CONV. RES. ARM M:F P:3  
23 RIDGEWOOD DR NORWALK CT 06853-0000 GUAR  
-----MORE>

ACT	SCHED	ACTUAL	STEP	STEP DESCRIPTION	PRED	FLT	COST	G	R	C	L	F	P	T
101602	101702	002	RECEIVED IN FCL DEPT		0			*					1	
101802	101702	004	ASSIGN TO PROCESSOR		002	1							2	
101802	101702	006	REFERRED TO ATTY/TRUSTEE		002	1								
101902	101802	045	FILE OPEN-ATTY/TRUSTEE		006	2								
122002	112602	034	ORIGINAL DOCS TO ATTORNEY		002	64								
110702	102902	300	1ST LEGAL ACTION		045	20							3	
110802	110402	026	SERVICE COMPLETE			300	10							
030603	030603	239	CONTESTED			002	140							
042503		452	SEE FOR2 NOTES			239	50							
050203		017	FOLLOW UP WITH ATTORNEY		002	197								
050903		092	FINAL JUDGEMENT ENTERED		017	7								
061203		082	RECD BID AMOUNT		092	34							4	
061803		198	FCL SALE SCHEDULED		092	40							4	
061803		232	LAW DAY		092	40							5	
061803		096	SALE HELD		092	40								
061803		100	NOTIFY INVESTOR SALE HELD		096	0								
061803		175	REO ACQUIRED		096	0							5	

DLQ1 [REDACTED] 60590 Q7 DELINQUENCY OWNR 06/05/03 19:30:03  
13-A CONV. RES. ARM PER/CLS/OFF F/AA/00 AGE: 3Y 3M IR: 5.92300 INV: A01  
DUE( 15) 28,216.77 DUE 04/01/02( ) (10/15) ASSUM: ACQ:  
LATE CHRG 756.21 PAYMT @ 1,767.31 P: 23 RIDGEWOOD DR  
BAD CK FEES .00 L/C AMT 88.37 NORWALK CT 06853  
OTHER FEES 53.20 PAYMT + LC 1,855.68 M:  
TOT DUE 29,026.18\* PRIN BAL 315,654.00  
SUSPENSE .00 P&I 1,767.31 23 RIDGEWOOD RD  
NET DUE 29,026.18 DLQ 12 TIME, PAY 47 DAY NORWALK CT 06853  
C/S 301 RICHARD HOLT 203-853-1715  
C/D 02/03 B BUSINESS-MR 203-866-8420

----- \* ADDITIONAL MESSAGES \* ----- WU: P -----  
HI-TP 1 XFER ID NPA03DUE 07/01/03 WORK STATION SET UP FOR DUE DILIGENCE  
CASHIER STOP 5 LOAN IS ACTIVE FORECLOSURE

-----~CORP----- \* CORPORATE ADVANCE INFO \*-----  
CORPORATE ADVANCE BALANCES CORPORATE ADVANCE DATES  
MORTGAGOR RECOVERABLE \$ 989.40 1ST DATE: 01/31/03  
3RD PARTY RECOVERABLE \$ .00 LAST DATE: 03/28/03  
NON-RECOVERABLE \$ .00

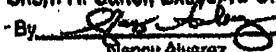
1 0590 CUSTOMER SERVICE INV A01/006 06/04/03 20:21:14  
RICHARD HOLT 000-00-0000 GC TYPE COMV. RES. ARM MAN F  
29 RIDGENOOD DR NORMWALK CT 06853-0000 IR 5.92300 BR 00 203-853-1715  
< ERC> SNT LTTR TO CUSTOMER INCLUD VON FOR PAST ZYR >: 11/12/02  
--- LOAN --- LOAN INFORMATION ---  
--- 04/01/02 PMT --- LAST PAID DATE DUE AMOUNT (13 MONTHS)  
\*1ST PAY 1767.31 NSF 07/12/02 04/02 .00 NW: P  
\*TOT PAY 1767.31 HAZARD ESC DISB 10/15/02 00/00 444.17-  
CX .00  
BALANCED COUN NO  
00/00 06  
LC DUE 756.21 ----- BALANCES ----- BILL AMT BILL PROD  
OTH FEES 53.20 PRINCIPAL 315,694.00 07/12/02  
TOT DUE 29026.18 ESCROW .00 TTD FEE .00  
-- PENDING PAYMENT -- SUSPENSE .00 TTD TAX .00  
05/02 1899.85 RES ESC .00 TTD INT .00  
--- PTZ FOR ADDL MESSAGES ---  
EX-TP 1 AFTER 1D NFASIDEK 07/01/03 WORK STATION SET UP FOR DOG DILIGENCE  
LOAN IS ACTIVE FORNCLOSURE LOAN IS IN FORNCLOSURE, F/C STOP = 3  
INVOICE FLAG = 1 LOAN PAST DUE 015 MONTHS  
22

1 DAVID D. PIPER, CASB No. 179889  
david.piper@kyl.com  
2 KRISTY H. SAMBOR, CASB No. 274452  
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3 KEEBAL, YOUNG & LOGAN  
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4 400 Oceangate  
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5 Telephone: (562) 436-2000  
Facsimile: (562) 436-7416

6 Attorneys for Defendants  
7 JPMORGAN CHASE BANK, N.A., CALIFORNIA  
RECONVEYANCE COMPANY, and U.S. BANK  
8 NATIONAL ASSOCIATION, as Trustee, successor  
in interest to Bank of America, National Association  
9 as Trustee as successor by merger to LaSalle Bank,  
National Association as Trustee for WaMu Mortgage  
10 Pass-Through Certificates Series 2007-HY1

FILED  
Superior Court of California  
County of Los Angeles

JUN 08 2017

Sherri R. Carter, Executive Officer/Clerk  
-By  Deputy  
Nancy Alvarez

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES  
14

15 HARRY M. FOX, as individual and as Trustee of ) Case No. BC602491  
the FOX LIVING TRUST, )  
16 Plaintiff, ) Action Filed: November 25, 2015  
17 vs. ) JOINT TRIAL STIPULATION RE ISSUES  
18 ) AND FACTS  
19 JP MORGAN CHASE BANK, N.A.; ) ASSIGNED FOR ALL PURPOSES TO:  
US BANK, N.A.; ) Judge Dalila Corral Lyons, Dept. 20  
Bank of America, NA; )  
20 WaMu Mortgage Pass Through Certificates )  
Series 2007-HY1 Trust )  
21 California Reconveyance Company; )  
Doe Defendants, )  
22 Defendants. )  
23

24  
25 Plaintiff HARRY M. FOX, as individual and as Trustee of the FOX LIVING TRUST  
26 and Defendants JPMORGAN CHASE BANK, N.A. ("Plaintiff") and Defendants JPMORGAN  
27 CHASE BANK, N.A. ("Chase"), CALIFORNIA RECONVEYANCE COMPANY ("CRC"), and U.S.  
28

JOINT TRIAL STIPULATION RE ISSUES AND FACTS

KYL4835-5135-7258.1

KYL4835-5135-7258.1

17:11:59 2017-06-07

86/11/2017

1 BANK NATIONAL ASSOCIATION, as Trustee, successor in interest to Bank of America, National  
2 Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for  
3 WaMu Mortgage Pass-Through Certificates Series 2007-HY1 ("U.S. Bank") (collectively,  
4 "Defendants") (Plaintiff and Defendants, together, the "Parties"), hereby submit this Joint Trial  
5 Stipulation re Facts and Issues.

6 The Parties stipulate to the following:

7

8

FACTS

9 1. The loan was confirmed by an Adjustable-Rate Note ("Note") dated December  
10 6, 2006 and executed by Plaintiff.

11 2. Harry M. Fox entered into a financial transaction for the advancement of funds  
12 as a loan, for \$690,000.

13 3. Plaintiff's loan was secured by a Deed of Trust ("DOT") encumbering Plaintiff's  
14 property.

15 4. The DOT is dated December 6, 2006 and was executed by Plaintiff.

16 5. The DOT was recorded on December 14, 2006 with the Los Angeles County  
17 Recorder's Office as instrument number 06-2777744.

18 6. CRC is identified as the trustee of Plaintiff's deed of trust.

19 7. JPMorgan Chase Bank, N.A. signed the modification agreement executed by  
20 Mr. Harry M. Fox as the "lender".

21 8. Investor Code A01 in the Loan Transfer History File represents WaMu Asset  
22 Acceptance Corporation.

23 9. Investor Code 369 in the Loan Transfer History File represents Washington  
24 Mutual Mortgage Securities Corporation.

25 10. JPMorgan Chase Bank, N.A. did not purchase the loan from the Federal  
26 Deposit Insurance Corporation.

27 11. The DOT reflects that the lender can sell Plaintiff's loan at any time without  
28 notice to Plaintiff. Section 20 of the DOT provides that "[t]he note or a partial interest in the Note

11027717

1 (together with this Security Instrument) can be sold one or more times without prior notice to  
2 Borrower."

3 12. The PSA lists LaSalle Bank National Association ("LaSalle") as the trustee of  
4 the trust pool.

5 13. The closing date of the PSA was January 24, 2007.

6 14. Pursuant to a Certificate issued by the Comptroller of the Currency, Bank of  
7 America-National Association ("BoA") succeeded LaSalle as trustee for the trust pool, effective  
8 October 17, 2008.

9 15. Pursuant to the Purchase Agreement dated November 11, 2010, U.S. Bank  
10 succeeded BoA as trustee for the trust pool.

11 16. U.S. Bank is the trustee of the trust pool.

12 17. On March 14, 2011, a Notice of Default and Election to Sell Under Deed of  
13 Trust ("NOD") was recorded on Plaintiff's property.

14 18. The NOD was recorded with the Los Angeles County Recorder's Office as  
15 instrument number 204-10383735.

16 19. The NOD bears a Declaration of Compliance regarding California Civil Code §  
17 2923.5(b) that Chase had contacted the borrower to discuss the borrower's financial situation and to  
18 explore options for the borrower to avoid foreclosure.

19 20. At his deposition on March 10, 2017, Plaintiff testified about when he  
20 discovered that Chase improperly reported his interest payments for the years 2011, 2012, and 2013.  
21 Plaintiff admitted that he discovered the allegedly improper reporting for 2011 in the beginning of  
22 2012, the allegedly improper reporting for 2012 in the beginning of 2013, and the allegedly improper  
23 reporting for 2013 in the beginning of 2014.

24 21. At the time the Note and DOT were executed, neither Chase nor U.S. Bank had  
25 any involvement in Plaintiff's loan.

26 22. CRC was the trustee of Plaintiff's loan.

27  
28  
6/12/2017

1

**OTHER**

2       1. The Parties stipulate to Local Rule 3.49(c): "Stay of Execution. In the event of a  
3 judgment in favor of the plaintiff, a stay of execution may be issued to be effective for a period of ten  
4 days after determination of a motion for a new trial or until ten days after expiration of the time to file  
5 notice of intention to move for a new trial."

6

7       **IT IS SO STIPULATED.**

8

9       DATED: June 7, 2017

10

11

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26

27

28

*Ronald H. Freshman*  
RONALD H. FRESHMAN  
LAW OFFICE OF RONALD H. FRESHMAN  
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FOX LIVING TRUST

*K. Sambor*  
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RECONVEYANCE COMPANY, and U.S. BANK  
NATIONAL ASSOCIATION, as Trustee, successor in  
interest to Bank of America, National Association as  
Trustee as successor by merger to LaSalle Bank, National  
Association as Trustee for WaMu Mortgage Pass-  
Through Certificates Series 2007-HY1

6/7/2017

## **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of  
3 18 and not a party to the within action; my business address is 2372 SE Bristol Street,  
4 2nd Floor, Newport Beach, California 92660. On June 7, 2017, I served the within  
5 **JOINT STIPULATION RE ISSUES AND FACTS** the interested parties in said action  
by placing the original a true copy thereof, enclosed in a served envelope and addressed  
as follows:

Kristy Sambor, Esq.

[Kristy.SamborOkyl.com](http://Kristy.SamborOkyl.com)

---

**KESAL, YOUNG & LOGAN, APC**

---

400 Oceangate

Long Beach, CA 90802

Tel: (562) 436-2000

**Fax: (562) 436-7416**

*Attorneys for Defendants, JP MORGAN CHASE BANK, N.A.; US BANK, N.A.;  
BANK OF AMERICA, NA; WAMU MORTGAGE PASS THROUGH  
CERTIFICATES SERIES 2007-HY1 TRUST*

BY UNITED STATES MAIL, I am "readily familiar" with the practice of collection and processing correspondence for mailing. Under that practice, it would be deposited in a box or other facility regularly maintained by the United States Postal Service with First-Class postage thereon fully prepaid that same day at Newport Beach, California, in the ordinary course of business.

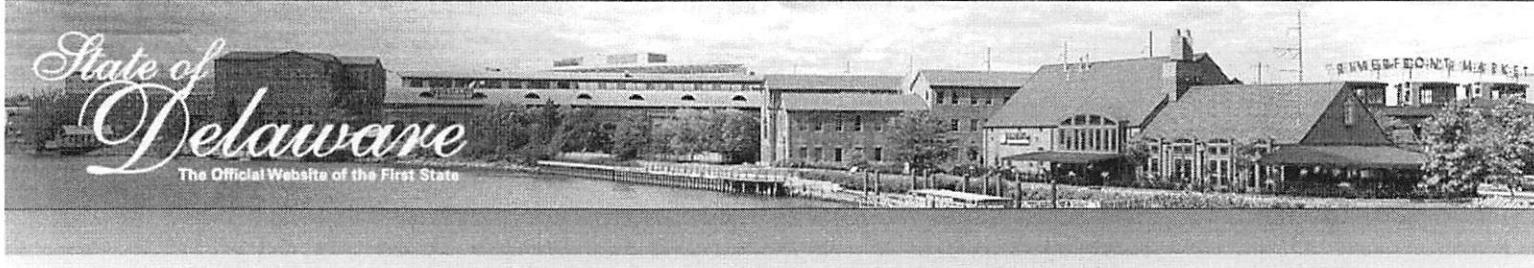
18    X OVERNIGHT DELIVERY – I deposited such envelope for collection and delivery by  
GSO Overnight with delivery fees paid or provided for in accordance with ordinary business  
practices. Packages for overnight delivery by GSO Overnight are deposited with a facility  
regularly maintained by GSO Overnight for receipt on the same day in the ordinary course of  
business.

21        BY PERSONAL SERVICE, I caused to be delivered such envelope by hand to the offices  
22 of the addressee.

23 I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

25 | Dated: June 7, 2017

  
Melissa Alvarez, Declarant



## Department of State: Division of Corporations

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THIS IS NOT A STATEMENT OF GOOD STANDING

<u>File Number:</u>	3908699	<u>Incorporation Date / Formation Date:</u>	1/6/2005 (mm/dd/yyyy)
<u>Entity Name:</u>	WAMU ASSET ACCEPTANCE CORP.		
<u>Entity Kind:</u>	Corporation	<u>Entity Type:</u>	General
<u>Residency:</u>	Domestic	<u>State:</u>	DELAWARE

[REGISTERED AGENT INFORMATION](#)

<u>Name:</u>	THE CORPORATION TRUST COMPANY		
<u>Address:</u>	CORPORATION TRUST CENTER 1209 ORANGE ST		
<u>City:</u>	WILMINGTON	<u>County:</u>	New Castle
<u>State:</u>	DE	<u>Postal Code:</u>	19801
<u>Phone:</u>	302-658-7581		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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**EXHIBIT "Q"**

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION  
File Name: 12a0961n.06

No. 11-1777

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL CITY BANK, )  
Plaintiff-Appellee, )  
v. )  
SYATT REALTY GROUP, INC.; FAIRFIELD AND )  
BANKS REAL ESTATE GROUP, LLC; FAIRFIELD )  
AND BANKS FUND MANAGER, LLC; LISA WRIGHT,)  
an individual; and DELBERT SAULTER, an individual, ) ON APPEAL FROM THE UNITED  
jointly and severally, ) STATES DISTRICT COURT FOR  
Defendants, ) THE EASTERN DISTRICT OF  
and ) MICHIGAN  
GLEN WRIGHT, an individual, )  
Plaintiff-Appellant, )  
OPINION )  
)

**FILED**  
***Aug 29, 2012***  
LEONARD GREEN, Clerk

**Before: COLE and DONALD, Circuit Judges; and SARGUS, District Judge.\***

**Donald, Circuit Judge.** In 2005, Defendant-Appellant Glen Wright (“Wright”) signed documents to obtain a loan from Plaintiff-Appellee National City Bank (“NCB”). The proceeds of

\*The Honorable Edmund A. Sargus, Jr., United States District Judge for the Southern District of Ohio, sitting by designation.

No. 11-1777

*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

the loan were distributed to Wright, Syatt Realty Group, Inc. (“Syatt”), and Fairfield & Banks (“F&B”)<sup>1</sup>—business entities associated with Wright and owned by his business associates Lisa Wright (“Lisa”) and Delbert Saulter (“Saulter”). When the loan was not timely paid, NCB filed the present lawsuit against Wright, Lisa, Saulter, Syatt, and F&B. This appeal only concerns NCB’s claims against Wright. NCB alleges that Wright made fraudulent and innocent misrepresentations about his personal finances in order to obtain the loan, that Wright was part of a civil conspiracy, and that Wright breached a promissory note. The district court granted summary judgment in favor of NCB on each of these claims, and Wright timely appealed. For the following reasons, we REVERSE the district court’s orders granting summary judgment in favor of NCB and REMAND for further proceedings.

I.

Wright is a Tennessee financial planner who occasionally conducts business in Michigan. In 2005, Wright began investing in Michigan real estate with Lisa and Saulter. Lisa and Saulter formed Syatt to represent buyers and sellers of investment properties. Wright was not a formal partner in Syatt, but he did participate in some business ventures with it. F&B was formed as a real estate investment trust to pool funds from investors, buy properties, and then pay a return to investors from the gains realized by the real estate investments. Wright was not a principal, partner, or owner

---

<sup>1</sup>There are three F&B entities—Fairfield & Banks Real Estate Trust, L.L.C., Fairfield & Banks Real Estate Group, L.L.C., and Fairfield & Banks Fund Manager, L.L.C. The distinction between them is not relevant for purposes of this appeal; thus, we refer to them collectively as F&B.

No. 11-1777

*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

in F&B; only Lisa and Saulter were. Wright's role was to introduce investors to investment opportunities with F&B, and he referred at least one client to invest in F&B.

In February 2005, Wright joined Lisa and Saulter (acting as Syatt) to purchase a house in Michigan (the "Avon property") and resell it for profit. Wright, Lisa, and Saulter planned to use Wright's credit profile, which was stronger than the credit profiles of Lisa, Saulter, and Syatt, to obtain a loan to purchase the Avon property, but no written agreement memorialized this plan. As part of the Avon property transaction, Wright gave a one-time power of attorney to Lisa so she could complete the loan documents and expedite the sale. Wright and Syatt were able to purchase the Avon property and flip it for a \$10,000 profit. While Wright received \$4,000 from the Avon property deal soon after it was completed, he claims that Lisa originally promised him approximately \$20,000 more from the investment.

In June or July of 2005, Saulter learned of an opportunity to purchase a house in Michigan (the "Webber property") from a distressed owner. The owner was in financial straits and could no longer afford the mortgage, but apparently the value of the Webber property relative to the mortgage made assumption of the existing mortgage a profitable investment. Syatt thus agreed to assume the mortgage and provided a small kickback to the distressed sellers.

Around the same time, Wright, Lisa, and Saulter agreed to seek a line of credit in order to fund other business ventures. Lisa and Saulter assert that the loan was to be secured by another mortgage on the Webber property with the proceeds going to fund F&B. Because Wright had the

No. 11-1777

*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

strongest credit profile, he, Lisa, and Saulter again planned to use his financial information to obtain the loan. Lisa and Saulter set up a loan with NCB banker Mark Clark ("Clark"), who was a friend of Saulter's. According to Wright, the loan was to be a personal line of credit that would be treated as a business line of credit so that it would not show up on Wright's credit report.

At some point during the summer of 2005, Wright went to Lisa's office and completed a series of NCB forms, which he thought was an NCB loan application. Wright signed a Personal Financial Statement, a Future Advance Mortgage, a Good Faith Estimate of Closing Costs, a Settlement Statement, a Notice of Right to Cancel, and a Fixed Rate Consumer Note and Security Agreement ("the Note"). According to Wright, these documents were blank when he signed them and he only saw the relevant signature pages. The completed Personal Financial Statement included false information about Wright's finances. At his deposition, Wright testified that he gave the blank documents to Lisa, that she had access to his accountant to obtain the proper information, and that she may have asked him some questions over the telephone, but Wright insists that he did not provide the false information that was included in the Personal Financial Statement.

The forms Wright signed were delivered to Clark, who forwarded them to NCB's main underwriting office in Cleveland, Ohio. The loan to Wright was conditionally approved subject to two conditions—that NCB take a second mortgage on the Webber property, which had been offered as collateral, and that the first mortgage on the Webber property not be greater than \$293,000. The conditional approval was returned to Clark, but he did not ensure that the two conditions were met. In fact, the first mortgage on the Webber property was over \$600,000, which violated the second

No. 11-1777

*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

condition of approval. Nonetheless, on August 8, 2005, Clark disbursed the proceeds from the loan, via NCB cashier's checks, as follows: \$20,000 to Wright, \$130,000 to F&B, and \$350,000 to Syatt. According to Clark, Wright approved this allocation of the proceeds, but Wright claims he did not.

On June 6, 2007, NCB filed a complaint against Wright, Lisa, Saulter, Syatt, and F&B, alleging claims of bank fraud/intentional and innocent misrepresentation, money had and received, payment by mistake, unjust enrichment, and civil conspiracy. NCB seeks damages of \$540,000 plus attorney fees, interest, and costs. During discovery, Wright admitted that the documents submitted to NCB contained his signature, after which the district court granted NCB's motion to amend its complaint to add a claim for breach of promissory note. Wright and NCB each filed two motions for summary judgment on NCB's claims against Wright—one each for the claims raised in the original complaint and one each for the breach of promissory note claim. NCB also filed a motion to dismiss Wright's counterclaims. The district court granted NCB's motions for summary judgment and motion to dismiss and denied Wright's motion for summary judgment. On May 19, 2011, the district court granted NCB's motion to amend the judgment and awarded NCB \$1,288,389.35, a total amount including principal, interest, and attorney fees, to which Wright was jointly and severally liable with Syatt and F&B. On June 15, 2011, Wright timely appealed.

## II.

We review de novo the district court's grant of NCB's motions for summary judgment. *Harrison v. Ash*, 539 F.3d 510, 516 (6th Cir. 2008). Summary judgment is appropriate where the

No. 11-1777

*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

materials in the record show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party must conclusively show that no genuine issue of material fact remains for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). We must view all facts and inferences in the light most favorable to the nonmoving party without making credibility determinations or weighing the evidence. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A.

The district court first granted summary judgment in favor of NCB on its claim for breach of promissory note. NCB alleges that it loaned Wright \$500,000 in exchange for the Note, which promised payments to NCB in monthly installments. The Note contains an acceleration clause, under which the entire Note would be due immediately and in full should Wright fail to make a monthly payment. NCB insists that Wright failed to make the monthly payments, meaning the Note is now payable immediately and in full. Wright denies these allegations.

The district court concluded that NCB was the holder of a valid promissory note. A promissory note is a negotiable instrument pursuant to the Michigan Uniform Commercial Code (“MUCC”), which defines a negotiable instrument as

an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if all of the following apply:

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*Nat'l City Bank v. Syatt Realty Group, Inc., et al.*

- (a) It is payable to bearer or to order at the time it is issued or first comes into possession of a holder.
- (b) It is payable on demand or at a definite time.
- (c) It does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of an obligor.

Mich. Comp. Laws § 440.3104(1). A holder is “the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.” *Id.* § 440.1201(20).

The Note is a negotiable instrument pursuant to § 440.3104(1). It is payable to the order of NCB. It is payable at a definite time—360 monthly payments. And, there are no undertakings or instructions except with regard to the use of mortgaged property as collateral. The acceleration clause in the Note does not destroy its negotiability. *See Northwestern Finance Co. v. Crouch*, 242 N.W. 771, 771 (Mich. 1932). Furthermore, NCB qualifies as a holder of the Note pursuant to § 440.1201(20) because the Note was made to the order of NCB and NCB possesses it.

The district court granted summary judgment in favor of NCB because it determined that NCB was entitled to enforce the Note. A holder of an instrument is entitled to enforce it. Mich. Comp. Laws § 440.3301. The MUCC provides that “[i]f the validity of signatures is admitted . . . [,] a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to

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enforce the instrument under section 3301, unless the defendant proves a defense or claim in recoupment." *Id.* § 440.3308(2). Wright admits that he signed the Note; thus, there is no dispute as to the validity of the signatures. Instead, Wright offers two defenses against NCB's attempt to enforce the Note—that there was a failure to contract because there was no manifestation of intent between the parties and that NCB failed to perform a condition of the Note.

1.

Wright first argues that no contract was formed because NCB never approved the loan. NCB's Cleveland office placed conditions on the approval of the loan, and those conditions were not satisfied prior to the proceeds being disbursed. Thus, Wright avers, NCB did not manifest an intent to be bound by the loan>Note.

NCB's failure to follow its own internal procedures for approving a loan, however, does not represent a failure to contract. NCB agreed to the terms of the loan by disbursing the funds on it. Moreover, even if the funds were disbursed by an NCB employee who lacked the authority to approve the loan or disburse the funds, NCB ratified the agreement by seeking to enforce it. *See David v. Serges*, 129 N.W.2d 882, 883 (Mich. 1964). Therefore, there can be no dispute that NCB accepted the terms of the Note.

Wright insinuates that he did not agree to the terms of the contract because he signed blank documents that he thought were merely part of the application process rather than binding loan documents. Wright's acceptance of the terms of the Note also cannot be disputed. In signing the

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Note, Wright assented to its terms and warranted that he had read the document. In a paragraph immediately above the line for Wright's signature, the Note reads:

YOU HAVE READ AND AGREE TO ALL PROVISIONS OF THIS NOTE INCLUDING THOSE ON PAGES 1 THROUGH 3 AND IN THE DISCLOSURE STATEMENT WHICH ARE INCORPORATED HEREIN BY REFERENCE. (1) DO NOT SIGN THE NOTE BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES TO BE FILLED IN. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS NOTE BEFORE YOU SIGN IT. BY SIGNING THE NOTE, YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND HAD AN OPPORTUNITY TO REVIEW A COMPLETED COPY OF THIS ENTIRE NOTE BEFORE SIGNING IT ON THE DATE SHOWN ON PAGE 1. SEE PAGES 1, 2 AND 3 AND THE DISCLOSURE STATEMENT FOR ADDITIONAL IMPORTANT TERMS AND CONDITIONS.

Wright's misunderstanding as to what he was signing and his failure to demand a completed copy of the Note prior to signing do not obviate the validity of his signature or negate his acceptance of the terms of the Note. Based on the clear language of the Note, there can be no factual dispute as to Wright's acceptance of its terms.

Wright also argues that no agreement was made because NCB altered a loan document by changing how the proceeds were to be distributed. A fraudulently made alteration to a negotiable instrument may provide the party whose obligation is affected with a defense against enforcement. Mich. Comp. Laws. § 440.3407(2). NCB admits that the Settlement Statement was altered to reflect the allocation of the proceeds from the loan, but that alteration does not provide Wright a defense to enforcement of the Note. The Settlement Statement is not part of the Note; thus, the alteration is not a defense to enforcement pursuant to § 440.3407(2).

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Wright does not have a defense against enforcement of the Note based on a failure to contract. There is no dispute of fact as to whether NCB or Wright assented to the terms of the Note. Furthermore, NCB did not fraudulently alter the Note. Wright's arguments otherwise are without merit.

2.

Wright also argues that the Note cannot be enforced because NCB did not fulfill a condition precedent by loaning Wright \$500,000. The Note states that Wright gave a promise to pay in exchange for "value received" in the form of a loan and that Wright authorized NCB "to disburse all proceeds from this Loan as indicated in the Itemization of the Amount Financed in the Disclosure Statement." According to the Disclosure Statement, the value received by Wright was \$500,000, an "[a]mount given to you directly." Wright claims NCB failed to loan all of the money to him.

The failure to properly distribute the proceeds of a loan can provide a defense against the enforcement of a negotiable instrument. "If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed." Mich. Comp. Laws § 440.3303(2). In other words, a lack of consideration is a defense available to the maker of an instrument. *EA Mgmt. v. JP Morgan Chase Bank, N.A.*, 655 F.3d 573, 576 (6th Cir. 2011). Moreover, "the right to enforce the obligation of a party to pay an instrument is subject to . . . [a] defense of the obligor stated in another section of this article." Mich. Comp. Laws § 440.3305(1)(b). Sections 440.3303(2) and 440.3305(1)(b) are part of the same article. *EA*

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*Mgmt.*, 655 F.3d at 576. Therefore, NCB's failure to provide value to Wright pursuant to the Disclosure Statement would provide Wright with a defense against the enforcement of the Note by NCB.

A genuine dispute of fact exists as to whether NCB disbursed the proceeds of the loan pursuant to the Note—that is, directly to Wright. Only \$20,000 of the \$500,000 went directly to Wright in the form of a check made payable to him. Of the remaining \$480,000, \$350,000 went to Syatt and \$130,000 went to F&B. Wright was not a formal owner, principal, or partner in either Syatt or F&B. While NCB suggests that Wright received subsequent payments from Syatt and F&B, those payments do not conclusively establish that the loan was disbursed directly to Wright. Moreover, Wright testified that he did not authorize the disbursements. Accordingly, a dispute of fact exists. The trier-of-fact must determine whether NCB satisfied the requirements of the Note by disbursing \$480,000 of the \$500,000 to recipients other than Wright personally. Summary judgment in favor of NCB on the claim for breach of promissory note, then, was inappropriate.

B.

NCB's Amended Complaint alleges that Wright provided false information in the documents he signed to obtain the loan, namely the Personal Financial Statement. Michigan law provides causes of action for fraudulent and innocent misrepresentations. NCB asserted claims under both theories, and the district court granted summary judgment in NCB's favor on both of them. Because

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there are genuine disputes of fact as to an element of both misrepresentation claims, the district court erred in granting summary judgment.

To establish a claim of fraudulent misrepresentation, a plaintiff must prove that:

(1) defendant made a material representation; (2) the representation was false; (3) defendant knew, or should have known, that the representation was false when making it; (4) defendant made the representation with the intent that plaintiff rely on it; (5) and plaintiff acted on the representation, incurring damages as a result.

*Foreman v. Foreman*, 701 N.W.2d 167, 175 (Mich. Ct. App. 2005). As to innocent misrepresentation,

A claim . . . is shown where a party detrimentally relies on a false representation in such a manner that the injury inures to the benefit of the party making the misrepresentation. It is unnecessary to prove that the party making the representation had knowledge that it was false. But for liability under a theory of innocent misrepresentation to arise there must be privity of contract between the party making the representation and the party claiming to have detrimentally relied on it.

*Roberts v. Saffell*, 760 N.W.2d 715, 720 (Mich. Ct. App. 2008) (quotation marks and citations omitted). An innocent misrepresentation plaintiff “need not prove that the defendant intended to deceive the plaintiff into relying on the false or misleading misrepresentation.” *Id.* Likewise, “false statements the claimant relied on are actionable irrespective of whether the person making them acted in good faith in making them.” *Id.* (quotation marks and citations omitted).

A fundamental element of NCB’s claims for fraudulent misrepresentation and innocent misrepresentation is that Wright made a representation to NCB. While Wright admits that the

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Personal Financial Statement submitted to NCB contained misrepresentations regarding his assets and liabilities, he insists that the document was blank when he signed it. Wright further testified during his deposition that he did not complete the Personal Financial Statement, that he did not provide the information included in it to anyone to complete on his behalf, and that whoever completed the Personal Financial Statement made up the information included in it. Wright's testimony creates a genuine dispute of fact as to whether he made a representation to NCB, which is a material element of both fraudulent and innocent misrepresentation claims. Because a genuine dispute of material fact exists, summary judgment was improper. The trier-of-fact must determine whether Wright's testimony is credible, and that determination is more appropriately made after a fair presentation of the evidence at trial rather than during the summary judgment phase of litigation.

C.

NCB's final claim against Wright is that he engaged in a civil conspiracy with Lisa and Saulter, which is actionable under Michigan law. According to NCB, Wright, Lisa, and Saulter engaged in a concerted action to obtain an unlawful mortgage loan from NCB. The district court agreed and granted summary judgment in favor of NCB. Because a genuine dispute of fact exists as to what Wright, Lisa, and Saulter agreed to do, summary judgment on this claim was not proper.

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Admiral Ins. Co. v. Columbia Cas. Ins. Co.*, 486 N.W.2d 351, 358 (Mich. Ct.

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App. 1992). “[A] claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable, tort.” *Early Detection Center, PC, v. New York Life Ins. Co.*, 403 N.W.2d 830, 836 (Mich. Ct. App. 1986).

Civil conspiracy requires proof that the defendant conspired for an unlawful purpose or conspired to use unlawful means. There appears to be no dispute that Wright, Lisa, and Saulter agreed to have Wright apply for a line of credit from NCB and to use the proceeds to fund their real estate ventures. But this is not an unlawful purpose, and NCB has not offered proof that they agreed to use unlawful means to obtain the loan. Wright testified that he signed blank documents, that he did not provide false information, that he, Lisa, and Saulter were trying to get a line of credit to fund future ventures, and that he was not aware of the property that would be used as collateral for the line of credit. Thus, a genuine dispute of material fact exists as to whether the agreement amongst Wright, Lisa, and Saulter was for an unlawful purpose or to use unlawful means.

The district court noted that “[o]nce the parties to a conspiracy have agreed to conspire, all acts done in furtherance of the conspiracy by one of the conspirators ‘is to be considered as the act of all, and all are liable irrespective of the fact that they did not actively participate therein or the extent to which they benefitted thereby.’” (quoting *Warsop v. Cole*, 291 N.W. 33, 36 (Mich. 1940)).

The district court’s insinuation here is that because someone (either Lisa, Saulter, or Wright) included false information in the documents submitted to NCB then that unlawful act can be attributed to each of the conspirators. The fact that someone included false information, however, does not establish that the conspiracy was for an unlawful purpose or that Wright, Lisa, and Saulter

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conspired to use unlawful means. The unlawful act of one co-conspirator is relevant only if the unlawfulness was part of the conspiracy as an agreed-upon purpose or means. Because there is a genuine dispute as to what Wright, Lisa, and Saulter agreed to do and how they agreed to do it, summary judgment in favor of NCB was inappropriate on the civil conspiracy claim.

III.

For these reasons, we REVERSE the district court's grant of summary judgment in favor of NCB as to NCB's claims against Wright for breach of promissory note, fraudulent and innocent misrepresentation, and civil conspiracy, and we REMAND for further proceedings.

**EXHIBIT "R"**

**136 A.3d 1277 (2016)**

**163 Conn.App. 827**

**DEUTSCHE BANK NATIONAL TRUST COMPANY, Trustee**

v.

**Rodney THOMPSON et al.**

No. 37362.

**Appellate Court of Connecticut.**

Argued January 4, 2016.

Decided March 22, 2016.

Appeal from Superior Court, judicial district of Hartford, Vacchelli, J.

1276 11278 Rodney Thompson, self-represented, the appellant (named defendant).

Jordan W. Schur, for the appellee (substitute plaintiff).

BEACH, SHELDON and HARPER, Js.

HARPER, J.

In this foreclosure action, the self-represented defendant Rodney Thompson<sup>[1]</sup> appeals from the judgment of strict foreclosure, rendered in favor of the plaintiff, Deutsche Bank National Trust Company, as trustee.<sup>[2]</sup> On appeal, the defendant claims, among other things, that the plaintiff lacked standing to bring this action because it was not in possession of the subject note at the time the action was commenced.<sup>[3]</sup> Because the resolution of this claim is dependent upon a factual finding that is not part of the appellate record, and because this claim implicates the subject matter jurisdiction of the trial court, we are unable to review the merits of this appeal. We therefore reverse the judgment of the trial court and remand the case for further proceedings.

The following facts and procedural history guide our analysis. On January 25, 2007, the defendant executed a fixed-rate balloon note in favor of New Century Mortgage Company in exchange for a loan in the principal amount of \$213,600 to purchase real property in West Hartford. On March 9, 2009, the plaintiff commenced foreclosure proceedings against the defendant. <sup>1279</sup> In paragraph four of the plaintiff's complaint, it alleged that the defendant executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), that MERS assigned said mortgage to the plaintiff, and that the plaintiff is the holder of said mortgage and the note securing the mortgage.<sup>[4]</sup>

On August 18, 2009, the plaintiff filed a motion for default for failure to plead, which was granted by the clerk. The defendant never filed a motion to open judgment following entry of default, nor did he ever move to set aside the default. Also on August 18, 2009, the plaintiff filed a motion for judgment of strict foreclosure. The

motion for judgment of strict foreclosure was granted by the court, *Vacchelli, J.*, but not until September 16, 2013 — more than four years after it was filed. The reasons for delay were that the parties underwent lengthy foreclosure mediation and the defendant attempted to remove the case to federal court.

On November 6, 2013, the defendant filed a petition in bankruptcy under chapter 7 of the United States Code in the United States Bankruptcy Court for the District of Connecticut. On April 16, 2014, the bankruptcy court, Dabrowski, J., issued a discharge of debtor order pursuant to 11 U.S.C. § 727. The plaintiff subsequently filed a motion to open judgment and reset the law days on August 22, 2014. This motion was granted by the court, *Vacchelli, J.*, on September 22, 2014. The court did not file a memorandum of decision with either the initial September 16, 2013 judgment of strict foreclosure or the September 22, 2014 order opening the judgment and setting new law days, and no transcript of any proceedings before the trial court was filed with this court. This appeal followed.

On appeal, the defendant challenges the plaintiff's standing to bring the present foreclosure action. Specifically, the defendant claims that the plaintiff did not own or hold the subject note when it filed the foreclosure complaint, and that the defendant's mortgage lien — which the defendant claims is invalid — did not survive the bankruptcy proceedings. The plaintiff responds that the record is inadequate for review. The plaintiff further argues that because it alleged that it was the holder of the note, and because the defendant failed to plead and was defaulted, the defendant has admitted these crucial jurisdictional allegations and cannot challenge them on appeal.

"We begin our analysis with the subject matter jurisdiction claim and the applicable standard of review.... Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it.... [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction.... [T]his court has often stated that the question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court *sua sponte*, at any time." (Citations omitted; internal quotation marks omitted.) *Peters v. Dept. of Social Services*, 273 Conn. 434, 441-42, 870 A.2d 448 (2005). "A court does not have subject matter jurisdiction to hear a matter unless the plaintiff has standing to bring the action." *Western Boot & Clothing Co. v. L'Enfance Magique, Inc.*, 81 Conn.App. 486, 488, 840 A.2d 574, cert. denied, 269 Conn. 903, 852 A.2d 737 (2004).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy.... [W]hen a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause.... We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary.... In addition, because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver and may be raised at any time." (Citations omitted; internal quotation marks omitted.) *Equity One, Inc. v. Shivers*, 310 Conn. 119, 125-26, 74 A.3d 1225 (2013).

It is well established that "the holder of a note has standing to bring an action for strict foreclosure...." *Mengwall v. Rutkowski*, 152 Conn.App. 459, 463, 102 A.3d 710 (2014); see also *Fleet National Bank v. Nazareth*, 75 Conn.App. 791, 794-95, 818 A.2d 69 (2003) (plaintiff who held mortgage but not note lacked standing to institute foreclosure proceedings). "[A] holder of a note is presumed to be the owner of the debt,

and unless the presumption is rebutted, may foreclose the mortgage under [General Statutes] § 49-17. The possession by the bearer of a note [e]ndorsed in blank imports *prima facie* that he acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note establishes his case *prima facie* against the makers and he may rest there." (Internal quotation marks omitted.) *Equity One, Inc. v. Shivers, supra*, 310 Conn. at 135, 74 A.3d 1225.

If the plaintiff did not hold the note at the time it commenced this action, then it would have lacked standing and the case must be dismissed. The key question for us to resolve, therefore, is when the note came into the plaintiff's possession. We cannot answer this question for two reasons. First, after a thorough review of the record, we conclude that it contains no documents demonstrating when the plaintiff came to hold or own the note. The only note in the record before us is the fixed-rate balloon note. This note is payable to the original lender, New Century Mortgage Company, and contains no endorsement. Although the record contains documents memorializing the assignment of the mortgage from MERS to the plaintiff, there are no assignment documents with respect to the note. Thus, the record provides no clues as to when, if ever, the plaintiff acquired the note. Second, the trial court made no factual finding as to when the plaintiff acquired the note. No memorandum of decision accompanies the court's judgment of strict foreclosure or order on the plaintiff's motion to open judgment and reset the law days.<sup>[5]</sup> Additionally, no transcript of any hearing in which the court might have made such a finding has been provided for our review. At oral argument before this court, the plaintiff's counsel asserted that in order to be entitled to a judgment of strict foreclosure, the note would have had to have been presented to the trial court and, therefore, the note must have been presented in the present case. We have no evidence before us that this occurred. Because the record lacks a crucial jurisdictional finding by the trial court, and further contains no evidence of when the plaintiff acquired the note, we cannot review whether the plaintiff lacked standing to commence this action.

This court's holding in *Deutsche Bank National Trust Co. v. Bialobrzeski*, 123 Conn.App. 791, 3 A.3d 183 (2010), is instructive to our analysis. The plaintiff in that case brought an action against the self-represented defendant to foreclose a mortgage on real property in New Britain. The plaintiff filed a motion for default for failure to plead, which was granted by the clerk. Id., at 792-93, 3 A.3d 183. The defendant subsequently answered, leaving the plaintiff to its proof with respect to its allegation that it was the holder of the note and mortgage. Id., at 793 and n. 2, 3 A.3d 183. As a result of the defendant's answer, the court opened the default. Id., at 793, 3 A.3d 183.

The plaintiff in *Bialobrzeski* subsequently filed an unopposed motion for summary judgment, which was granted as to liability only. Id. Among the documents submitted by the plaintiff in support of its motion for summary judgment was a fixed-adjustable rate note, which was payable to the original lender, Long Beach Mortgage Company. Id., at 793 n. 3, 3 A.3d 183. This note was *not endorsed*. Id. Subsequently, the defendant filed a motion to dismiss, arguing that the note contained no endorsement and no date. Id., at 796, 3 A.3d 183. The trial court denied the defendant's motion to dismiss. Id., at 794, 3 A.3d 183.

On appeal, the defendant in *Bialobrzeski* claimed that the plaintiff was not in possession of the subject note at the time the action was commenced. Id., at 792, 3 A.3d 183. This court noted that "[t]he key to resolving the defendant's claim is a determination of when the note came into the plaintiff's possession." Id., at 797, 3 A.3d 183. Ultimately, this court held that "[w]e cannot review the claim because [the trial court] made no factual

finding as to when the plaintiff acquired the note. Without that factual determination, we are unable to say whether [the trial court] improperly denied the defendant's motion to dismiss." Id., at 797-98, 3 A.3d 183. Noting that "appellate courts do not make findings of fact"; id., at 800, 3 A.3d 183; this court ruled that "[w]hen the question regarding the plaintiff's standing was raised, the [trial] court should have held a hearing to determine whether the plaintiff was the owner or holder of the note at the time the action was commenced." Id., at 799-800, 3 A.3d 183.

The record in the present case is likewise devoid of an endorsed note and a factual finding by the trial court concerning if and when the plaintiff acquired the note. The plaintiff nevertheless argues that the defendant cannot challenge the plaintiff's standing because the defendant failed to set aside the default judgment. In the plaintiff's view, because it alleged that it held the note, and because a default judgment was rendered in its favor, its status as holder of the note has been conclusively established and cannot be challenged by the defendant on appeal. We disagree. "A default admits the material facts that constitute a cause of action... and entry of default, when appropriately made, *conclusively determines the liability of a defendant.*" (Emphasis altered; internal quotation marks omitted.) Whitaker v. Taylor, 99 Conn.App. 719, 725, 916 A.2d 834 (2007). Although it is established that entry of default conclusively establishes the *liability* of a defendant, the plaintiff offers no authority to support its position that entry of default conclusively establishes the *subject matter jurisdiction* of the court. Moreover, we disagree with this position because it essentially posits that a party can waive a subject matter jurisdiction challenge by virtue of a pleading deficiency, namely, a failure to reply to jurisdictional allegations during the pleading stage. This is wholly unsupportable because "[a] subject matter jurisdictional defect may not be waived ... [or jurisdiction] conferred by the parties, explicitly or implicitly." (Internal quotation marks omitted.) Kleen Energy Systems, LLC v. Commissioner of Energy & Environmental Protection, 319 Conn. 367, 380-81, 125 A.3d 905 (2015).

Additionally, we reject the plaintiff's argument that an inadequate record precludes our review of its standing. "The duty to provide this court with a record adequate for review rests with the appellant.... It is incumbent upon the appellant to take the necessary steps to sustain its burden of providing an adequate record for appellate review. Practice Book § [60-5].... It is not the function of this court to find facts.... Our role is ... to review claims based on a complete factual record developed by a trial court.... Without the necessary factual and legal conclusions furnished by the trial court ... any decision made by us respecting [the defendant's claims] would be entirely speculative." (Internal quotation marks omitted.) Macricostas v. Kovacs, 67 Conn.App. 130, 133, 787 A.2d 64 (2001). Even if we were to accept that the record is inadequate, we are not foreclosed from considering the standing issue. To begin with, although it is indeed the burden of the defendant, as the appellant, to provide an adequate record for review, it is "[t]he plaintiff [who] bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) Fort Trumbull Conservancy, LLC v. New London, 265 Conn. 423, 430 n. 12, 829 A.2d 801 (2003). In Bialobrzeski, a case with similar facts and circumstances, this court held that "[a]lthough it is the appellant's responsibility to provide an adequate record for review; see Practice Book §§ 60-5 and 61-10; that cannot be the end of the matter because [whether a bank acquired a note before the commencement of a foreclosure action] concerns the trial court's subject matter jurisdiction." Deutsche Bank National Trust Co. v. Bialobrzeski, supra, 123 Conn.App. at 798, 3 A.3d 183. On the basis of the foregoing analysis, we, like the court in Bialobrzeski, are unable to review the defendant's subject matter jurisdiction claim.

The judgment is reversed and the case is remanded for a determination of the jurisdictional issue and for further proceedings according to law.

In this opinion the other judges concurred.

[1] Also named as a defendant in this action was Mortgage Electronic Registration Systems, Inc., but it did not participate in this appeal. We refer to Thompson as the defendant.

[2] The trial court granted the plaintiff's motion to substitute Deutsche Bank National Trust Company as Trustee for the Registered Holders of Morgan Stanley ABS Capital I, Inc., Trust 2007-NC4 Mortgage Pass-Through Certificates, Series 2007-NC4, as the party plaintiff. We refer to the substitute plaintiff as the plaintiff in this opinion.

[3] The defendant raised a number of additional claims on appeal, including claims that the mortgage was discharged in bankruptcy and that his due process rights were violated. Because we conclude that we are unable to review the defendant's subject matter jurisdiction claim, we do not address these additional claims.

[4] Although the plaintiff alleged that it was the holder of the mortgage as of the filing of the complaint in March, 2009, the assignment of mortgage between it and MERS is dated June 24, 2009. At oral argument before this court, the plaintiff's counsel conceded that the mortgage had not been assigned to the plaintiff until after the complaint was filed.

[5] The court made a number of factual findings in granting the motion to open judgment and reset the law days, such as the balance of the debt and the property's fair market value, but none concerning the plaintiff's status as holder of the note.

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**EXHIBIT "S"**

JPMorgan Chase Bank et al vs Sherone D. Waisome

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1  
2                   IN THE CIRCUIT COURT  
3                   OF THE FIFTH JUDICIAL CIRCUIT,  
4                   IN AND FOR LAKE COUNTY, FLORIDA

5  
6                   CASE NO.: 2009-CA 005717

7  
8                   ORIGINAL

9                   JP MORGAN CHASE BANK, NA  
10                  As successor in Interest to  
11                  WASHINGTON MUTUAL BANK,

12                  Plaintiff,

13                  vs.  
14                  SHERONE D. WAISOME, et al.,

15                  VOLUME I  
16                  Pages 1-101

17                  Defendants.

18                  VIDEOTAPED DEPOSITION OF: CYNTHIA A. RILEY  
19                  Taken on behalf of Defendant, Waisome

20                  DATE: Monday, August 29, 2011

21                  TIME: 1:25 p.m. - 6:23

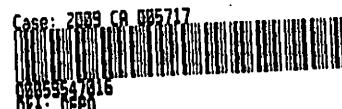
22                  LOCATION: Belton Bail Bonds  
23                                 525 West Main Street  
24                                 Tavares, Florida 32778

25                  REPORTER: Jennifer Little  
26                                 Court Reporter

27                  2011 DEC -8 PM 12:03  
28                  CLERK OF CIRCUIT  
29                  AND COUNTY COURT  
30                  LAKE COUNTY  
31                  TAVARES, FLORIDA

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16 On behalf of Mr. Waisome

17  
18 ALSO PRESENT:  
19 Greg W. Waugh, CCVS, videographer  
Nye Lavalle  
Sherone Waisome  
20

21 \* \* \* \* \*

22  
23  
24  
25

1

I N D E X

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\* \* \* \* \*

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S T I P U L A T I O N S

16

17

It is hereby agreed and so stipulated by  
and between the parties hereto, through their  
respective counsel, that the reading and signing of the  
transcript be waived by the Deponent.

21

22

23

24

25

1 to be. It's a think tank.

2 Q. Like a plan for the future?

3 A. Very much so.

4 Q. Okay. Okay. Do you recall back in -- would  
5 this have been in your vice president role or your  
6 assistant vice president role?

7 A. That would be more Stockton-related,  
8 assistant VP.

9 Q. All right. Do you remember what the  
10 initiative was? Was there one or more?

11 A. A number of them.

12 Q. Okay. Could you give me, like, an example.

13 A. Yes. We bought Bank United, Long Beach, PNC.  
14 All of those were integrations to the bank. I was on  
15 those teams that integrated the companies.

16 Q. Okay. But Bank United, you mean the one in  
17 Coral Gables?

18 A. I don't know where they were. It was Texas,  
19 as I remember. The mortgage side of the business, it  
20 was Texas.

21 Q. Okay. All right. I think we're going up to  
22 product manager senior, vice president strategic  
23 planning and integrations default, that's your next  
24 entry here on your resumé from 11/2006 to 2/2008.

25 A. Okay.

1 Q. Was that a promotion?

2 A. It was a -- I project-managed certain  
3 projects -- well, obviously, project manager.

4 Q. Okay. So I mean, did you get, like, a raise  
5 and...

6 A. No.

7 Q. Okay. Did your salary stay consistent  
8 throughout the transfer through -- I keep forgetting  
9 the old bank's name -- American Savings Bank?

10 A. No. We all make more money as we go along.

11 Q. So you were getting promotions?

12 A. There were promotions in there, certainly.

13 Q. And raises?

14 A. Yes. AVP to VP is a promotion and a raise,  
15 yes.

16 Q. Okay. What type of raise are we talking  
17 about, you know, \$5.00 an hour to \$10.00 an hour? I  
18 mean...

19 A. I would have no idea.

20 Q. Okay. Were you --

21 A. I'm salaried.

22 Q. Okay. All right. Do you remember what your  
23 salary was?

24 A. No.

25 Q. Okay. So you had a fixed salary. Would you

1 A. Not part of our department.

2 BY MS. MACK:

3 Q. Okay. Were the notes supposed to be endorsed  
4 by somebody other than the maker of the note?

5 A. The endorsement is done on every note.

6 Q. Do you know when that's done?

7 A. As soon as it's received in the collateral  
8 note review group. It's received in the collateral  
9 note review group within a very short time of the  
10 borrower signing it. I say it that way, because the  
11 borrower signs it, it was supposed to be sent within 24  
12 hours.

13 Q. Okay.

14 A. So it would hit the collateral note review in  
15 that period of time.

16 Q. Okay. And it would be endorsed?

17 A. It would be reviewed and endorsed.

18 Q. Okay. Would you do the reviewing?

19 A. No, I would not. I had a team of note  
20 review.

21 Q. Would you do any endorsing?

22 A. I would not.

23 Q. Okay. Would your team do the endorsing?

24 A. Yes, they would.

25 Q. Would they use their name?

849 CLOUDBERRY BRANCH WAY • JACKSONVILLE, FLORIDA 32259  
HOME PHONE: 904 230-2624 CELL PHONE 904 710-2611  
E-MAIL: RILEYCYNTHIA@BELLSOUTH.NET

## CYNTHIA A. RILEY

### SUMMARY

Experienced mortgage loan employee of 20 years with accomplishments in multiple departments and functions of Servicing. Skilled in project management, problem evaluation and resolution, strong communication, business knowledge, coordinating with diverse groups to execute projects, process analysis and improvement. Computer skills include Microsoft Outlook, Word, Excel, PowerPoint, Visio and Project.

### EDUCATION

University of Colorado, Colorado Springs

*Bachelors of Science, Major: Business Administration, Minor: Mineral Land Management*

### EMPLOYMENT

#### **JP Morgan Chase**

*Operations Manager, External Reporting (Default)*

*3/2008 to Present*

- Manage a team of Business Analysts generating monthly reporting to OCC, Fair Lending and Moody's. Generate responses to various audit requests including Fitch and S&P.
- Analyze and develop data requirements and source to target data mapping.
- Collaborate with management and staff in the development and implementation of projects.
- Ensured accuracy and consistency in the data supplied through analysis of other available data or generation of validation reports.
- Identify criteria and develop ad hoc reports in response to external inquiries i.e. FHLMC, FNMA, MI companies.

#### **Washington Mutual Bank**

*Product Manager Sr., Vice-President Strategic Planning and Integrations (Default)*

*11/2006 to 2/2008*

- Provided project management skills in support of various bank initiatives including Credit and Subpoena Migration to Jacksonville, FL and the Custodial Operations Transition to Florence, SC. Support provided included project plans, action items, minutes and coordination of team tasks all driving towards a successful and timely completion.
- Responsible for the operational readiness of the HELOC loans on Fidelity project for the National Post Closing Operations. Readiness preparation included development of Operating Instructions, determining business requirements and creation of system enhancement documentation as needed.
- New Product Response Team (NPRT) coordinator for Home Loans. Evaluated proposed new product documentation looking for impacts to servicing processes or systems. Provided weekly communication to the NPRT members for Loan Service.

*Process Manager – Vice President 6/2004 to 11/2006*

*Loan Servicing Manager – Assistant Vice President 1/2001 - 6/2004*

*Secondary Delivery Operations*

Exhibit A

WNS Riley  
0729/11

- Managed Collateral Note Review, Agency Delivery, Private Loan Delivery and Unsalable Loan Teams.
- Performed service transfer activities including coordination between seller, servicer and investor. Performed general ledger reconciliation, collateral and base file review, document exception curing and contract negotiation.
- Performed process analysis, and implemented change resulting in an 81% decrease in problem loans entering the queues and reduced the unsalable rate from 182% over goal to 43% under goal.
- Evaluated data generated from internal reports to determine the root cause of production concerns and implemented change to correct as needed.
- Authored operating instructions and job aides for various teams.
- Participated as a project team member in the implementation of enterprise wide projects including Z-State initiatives and Full File Imaging.

***Financial Analyst, Purchase Servicing Department***

***4/1994 to 1/2001***

- Provided project management support for the integration of newly acquired companies. Departments represented in this role included Secondary Delivery Operations, Lien Release and Records Management.
- Coordinated the activities affecting Loan Service departments resulting from the purchase of servicing rights and subsequent transfer of loans. Activities including, due diligence reviews, service transfer contract requirements, data mapping, loan boarding, general ledger reconciliation and transfer of collateral and base files.

***Supervisor, Customer Service/Tax/Insurance Departments***

***2/1990 to 4/1994***

- Responsible for the review, disbursement, research and invoicing of taxes and force order insurance (flood and hazard).
- Implemented Lereta Corp flood determination process
- Managed staff within a high paced call center to include escalated customer call handling, monitoring of customer service performance levels and training.

**SPECIAL TRAINING/DEVELOPMENT**

---

Corporate Project Methodology Certified

Institute of Financial Education: Real Estate Law, Supervisory Management, Mortgage Lending and Financial Accounting

**REFERENCES**

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Upon Request

Page 1

IN THE CIRCUIT COURT, 11TH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 09-29997 CA (11)

JP MORGAN CHASE BANK, N.A.,

Plaintiff,

vs.

EDUARDO OROZCO, et al.,

#### **Defendants.**

**DEPOSITION OF  
CINDY RILEY**

DATE TAKEN: January 15, 2013

10:00 a.m. - 12:23 p.m.

345 East Forsyth Street  
Jacksonville, Florida 32202

**Examination of the witness taken before:**

Samantha Cordova, FPR, Notary Public  
Hedquist & Associates Reporters, Inc.

345 East Forsyth Street  
Jacksonville, Florida 32202

# Hedquist & Associates Reporters, Inc.

## **Veritext Florida Reporting Co.**

800-726-7007

305-376-8800

1 Q When you say you were promoted, can you tell me  
2 what part of the promotion was? I mean, was it title?  
3 Was it money?

4 MR. WEISS: Object to the form of the question.  
5 Objection on privacy grounds.

6 MR. SCHWARTZ: Privacy. Proprietary  
7 information. Confidential. Go ahead.

8 A I was promoted to a vice president and became  
9 the department manager for secondary delivery operations  
10 in Jacksonville, Florida.

11 BY MR. WRUBEL:

12 Q And when did this promotion become effective?

13 A Effective date I don't know.

14 Q Okay. Do you know if it was while you're still  
15 in Stockton, California, or Jacksonville?

16 A I was making a transition between January and  
17 June of 2004. I was offered that job, travelled back  
18 and forth, and moved here in June 2004.

19 Q And would June of 2004 or couple months before  
20 then be the first time that you were ever a vice  
21 president with the bank?

22 A Correct.

23 Q Are you still a vice president with the bank?

24 A I am not.

25 Q When did you cease being a vice president with

1 the bank?

2 A 2008.

3 Q Do you know what month?

4 A January I would guess.

5 MR. SCHWARTZ: Don't guess.

6 A January 2008.

7 Q As a vice president did you have greater  
8 authority than you had before they made you vice  
9 president?

10 MR. WEISS: Object to the form of the question.

11 Vague and ambiguous.

12 MR. SCHWARTZ: Join.

13 BY MR. WRUBEL:

14 Q You can answer.

15 A I was managing a department as a vice president  
16 versus leading a team. Responsibilities were different.

17 Q Okay. Briefly can you tell me what the  
18 difference is between managing a team and leading a  
19 team?

20 A Managing a department and leading a team?

21 Q Yes, please.

22 A The team is one piece of the department. The  
23 department encompassed other responsibilities --

24 Q Okay.

25 A -- than my responsibility in note review as it

1 was as a team leader.

2 Q Okay. I recognize that it may vary. But when  
3 you're managing a department, approximately how many  
4 employees would be under your supervision?

5 MR. WEISS: Object to the form of the question.

6 Vague and ambiguous.

7 MR. SCHWARTZ: Overly broad as to what time  
8 we're talking about.

9 A Thirty -- thirty to forty people.

10 BY MR. WRUBEL:

11 Q Okay. Did you manage any other departments  
12 besides secondary delivery?

13 A No.

14 Q Okay. And how long did you manage secondary  
15 delivery for?

16 A Till 11 of 2006.

17 Q And I take it you're saying you managed  
18 secondary delivery approximately from June of 2004 to  
19 November of 2006?

20 A Correct.

21 Q And during that period of time you had  
22 approximately 30 to 40 employees under your supervision?

23 A Yes.

24 Q And tell us please what is secondary delivery?

25 A Secondary delivery operations, it was the name

1 was in Stockton or Vernon Hills I can't speak to that.

2 Q Okay. Did you ship to any other custodians in  
3 any locations other than Vernon Hills and Stockton?

4 MR. SCHWARTZ: Asked and answered. Form. Go  
5 ahead.

6 A I just don't know at what time frames we were  
7 shipping to some place other than those two.

8 Q Okay. Did there come a point in time that you  
9 shipped to Florence, South Carolina?

10 A When the vault was built -- I don't know if  
11 that -- I can't answer that.

12 MR. SCHWARTZ: If you don't know, say you don't  
13 know.

14 A I left the department.

15 Q Okay. When did you leave the department?

16 A In November of 2006.

17 MR. SCHWARTZ: You need a break?

18 THE WITNESS: I think that would be nice if we  
19 did.

20 MR. SCHWARTZ: You mind if she takes a break?

21 MR. WRUBEL: No.

22 (Break taken.)

23 BY MR. WRUBEL:

24 Q You've indicated that it was your team that did  
25 the endorsements of the stamps in Jacksonville. Did you

1 yourself ever endorse any of the notes?

2 A No.

3 Q Never?

4 A I never put an endorsement stamp on the notes.

5 Q Okay. How many notes a day were coming into  
6 the Jacksonville area, if you know, approximately?

7 A 2- to 3,000.

8 Q Assuming you only had 10, not 12, just if we  
9 can get through the question, am I correct then that  
10 your team would be each reviewing approximately 200 to  
11 300 notes a day?

12 MR. SCHWARTZ: Form. Speculating. Go ahead.

13 A That sounds reasonable.

14 Q And they would be checking the notes and the  
15 data for the loans -- strike that.

16 Each individual that was on the team would be  
17 checking the notes as well as the data with regards to  
18 the loans approximately 2- to 300 a day?

19 A They compared the data -- certain data on the  
20 note to what was on the system.

21 Q Would they be comparing any other data besides  
22 the data on the note to the system when they would go  
23 through the system?

24 A Other data like what?

25 Q Information from the mortgage perhaps.

**EXHIBIT "T"**

Washington Mutual  
Mailstop JAXA2031  
P.O. Box 44090  
Jacksonville, FL 32231-4090



7100 4047 5100 5023 8171

February 14, 2008



**Washington Mutual**  
**HOME LOANS**

000036

RICHARD HOLT  
23 RIDGEWOOD RD  
NORWALK CT 06853

**WE ARE A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

### **NOTICE OF COLLECTION ACTIVITY**

RE: [REDACTED] 60590 3  
23 Ridgewood Dr.  
Norwalk CT 06853

Dear Borrower:

The records of Washington Mutual Bank indicate that as of the date of this letter, you have failed to make the required monthly payments under the terms of your Note ("Note") and related Mortgage or Deed of Trust, whichever is applicable ("Security Instrument") since 09/01/2005. The total amount presently due and owing ("Total Amount Due") consists of the following:

Principal & Interest Payment:\$	53914.80
Escrow:	23136.30
Accumulated Unpaid Late Charges:	2812.64
Outstanding Fees Total:	115.70
Corporate Advance:	0.00
Credits:	0.00
Total Amount Due:\$	122197.31

The terms of the Note and Security Instrument require you to pay each monthly payment and any related late charge and other fees when due. This correspondence will serve to notify you that you are in default under the terms of your Note and Security Instrument because of your failure to pay the above mentioned Monthly Payments, related late charges and fees when due.

You may cure this default within thirty (30) days from the date of this letter by paying to Washington Mutual Bank the total amount due plus any additional monthly payments and late charges falling due within this thirty day period. Failure to cure such default within the 30-day period will result in Washington Mutual declaring the entire outstanding principal balance, accrued interest and any other fees and charges due under the terms of the Note and Security Instrument to be immediately due ("Acceleration"). If this amount is not immediately paid at such time, Washington Mutual may exercise its remedies available under the terms of the Note and Security Instrument and applicable law, including the commencement of foreclosure proceedings which may result in the sale of your property.

After acceleration, you will have the right to assert any grounds you may have to prove the non-existence of a default. You may also reinstate your loan. In addition, you will have the right in any related foreclosure proceedings to assert any defense to acceleration, the foreclosure litigation and, if applicable, the eventual sale of your property pursuant to a court order or trustee power of sale.

We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

Please contact our office immediately to discuss your account status. Our toll free number is 1-866-926-8937.

Sincerely,

Collection Department

15-22704-rdd Claim 3-1 Part 2 Filed 09/17/15 Pg 24 of 37

VOL 2005 PG 88  
RECORDED 11/18/2014 01:47:20 PM  
RICHARD A. MCNAUL  
TOWN CLERK NORWALK CT

After Recordation Return To:  
JPMorgan Chase Bank, NA  
C/O Nationwide Title Clearing, Inc.  
2100 Alt. 19 North  
Palm Harbor, FL 34683

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned,  
THE FEDERAL DEPOSIT INSURANCE CORPORATION, A CORPORATION ORGANIZED AND EXISTING  
UNDER AN ACT OF CONGRESS (FDIC), WHOSE ADDRESS IS 1601 BRYAN STREET, DALLAS, TX 75201,  
AND ACTING IN ITS RECEIVERSHIP CAPACITY AS RECEIVER OF WASHINGTON MUTUAL BANK  
KA WASHINGTON MUTUAL BANK, VA, (ASSIGNOR) by these presents does convey, grant, assign, transfer and  
set over the described Mortgage with all interest secured thereby, all fees, and any rights due or to become due thereon to  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, WHOSE ADDRESS IS 700 KANSAS LANE, MC  
3800, MONROE, LA 71203 (860)755-3747, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage bearing the date 03/22/2000, made by RICHARD HOLT to WASHINGTON MUTUAL BANK, FA, and  
recorded in the Land Records of the Town of NORWALK, State of Connecticut, in Volume 3876, at Page 250, to which  
reference may be had.

This Assignment is made without recourse, representation or warranty, express or implied, by the FDIC in its  
corporate capacity or as Receiver.

This Assignment is intended to further memorialize the transfer that occurred by operation of law on September 25,  
2008 as authorized by Section 11(d)(2)(G)(ii)(D) of the Federal Deposit Insurance Act, 12 U.S.C. §1821  
(d)(2)(G)(ii)(D).

IN WITNESS WHEREOF, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS ATTORNEY IN FACT  
FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER OF WASHINGTON MUTUAL  
BANK KA WASHINGTON MUTUAL BANK, FA has hereunto set its hand on 11/07/2014  
(MM/DD/YYYY).

By: Richard Holt

JPMorgan Chase

Vice President

Signed and Delivered in the presence of:

Corbett D. James,  
Attala County Sheriff's Office Witness

Loring Thawkins,  
Attala County Sheriff's Office Witness

STATE OF LOUISIANA, PARISH OF OUACHITA  
On 11/07/2014 (MM/DD/YYYY), before me appeared Selena Alex  
personally known, who did say that he/she/they is/are the VIC. PRESIDENT of JPMORGAN  
CHASE BANK, NATIONAL ASSOCIATION, AS ATTORNEY IN FACT FOR THE FEDERAL DEPOSIT  
INSURANCE CORPORATION AS RECEIVER OF WASHINGTON MUTUAL BANK KA WASHINGTON  
MUTUAL BANK, FA and that the instrument was signed on behalf of the corporation (or association), by authority from  
its board of directors, and that he/she/they acknowledged the instrument to be the free act and deed of the corporation (or  
association).

Lea Ann  
Notary Public - State of LOUISIANA

Commission expires: Upon My Death

Document Prepared By: Selena Alex, JPMorgan Chase Bank, N.A., 700 Kansas Lane, Suite A,  
Monroe, LA, 71203

EVA PRICE  
OUACHITA PARISH LOUISIANA  
LIPSTICK & CO. LLC  
NOTARY ID# 17070



Privacy Threshold Analysis (PTA)  
and/or Privacy Impact Assessment (PIA)

for

Title Search and Reporting Services  
Nationwide Title Clearing  
(RECVR-10-G-0255)



Date Approved by Chief Privacy Officer (CPO)/Designee: 7/16/2015

FDIC/ISPS Privacy Program Reviewer  
Serenity Edwards  
703.516.5448

FDIC Divisional Information Security Manager or Designee  
Edward Collins  
Division of Resolutions and Receiverships (DRR)  
703.516.5765

PTA/PIA TEMPLATE VERSION 1.5 - July 2014

## CONTACT INFORMATION AND BACKGROUND

<b>Check applicable box(es)</b> <input checked="" type="checkbox"/> PTA <input checked="" type="checkbox"/> PIA	<b>Date Submitted to Privacy Mailbox</b> ( <a href="mailto:privacy@fdic.gov">privacy@fdic.gov</a> ) 03.04.2015	<b>Date Contract Awarded</b> 12.20.2010	<b>Dates of Performance Period</b>	
			<b>From</b> 12.20.2010	<b>To</b> 12.19.2015
<b>Agency</b> FDIC	<b>Outsourced Provider (Vendor) Name(s)</b> Nationwide Title Clearing		<b>Contract Number(s)</b> RECVR-10-G-0255	
<b>Outsourced Service Name (Include Acronym)</b> Nationwide Title Clearing (Nationwide)		<b>Sponsoring FDIC Division or Office</b> Division of Resolutions and Receiverships (DRR)		
<b>Information Security Manager</b>		<b>Division Program Manager or Subject Matter Expert (SME)</b>		
Name: Title: Division: Telephone:	Edward Collins Information Security Manager DRR 703.516.5765	Name: Title: Division: Telephone:	Jim Wooley R&R Specialist, ORE DRR 972.761.4266	
<b>Contracting Officer</b>		<b>Oversight Manager (or Designee)</b>		
Name: Title: Division: Telephone:	Rochelle Nagel Contract Specialist Division of Administration (DOA) 972.761.2116	Name: Title: Division: Telephone:	Doug McCafferty R&R Specialist DRR 972.761.8254	
<b>Outsourced Information Service Provider Platform Information (Check all applicable boxes.):</b>				
<input checked="" type="checkbox"/> Vendor System ( <i>Data resides on the Provider/Vendor system.</i> ) <input checked="" type="checkbox"/> Non-Web ( <i>Data resides in Vendor system/application that does not interface with the Web.</i> ) <input checked="" type="checkbox"/> Web-Based ( <i>Specify type:</i> <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Intranet <input type="checkbox"/> Extranet)				
<b>Does the website use Persistent Tracking Technology?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes ( <i>If yes, complete and attach form FDIC 1300/25, Request for Persistent Cookie, if applicable.</i> ) <input type="checkbox"/> Not Applicable (N/A) ( <i>This is not an Internet or Extranet website.</i> )				
<input type="checkbox"/> Other (Specify: _____)				
<b>Additional Points of Contact (Specify any additional POCs, such as Technical Monitors, Project Manager (if applicable), Subject Matter Experts, etc.):</b>				
POC's Name: Title: Division: Telephone Number:	Angela Fichue R&R Specialist DRR 972.761.8598	POC's Name: Title: Division: Telephone Number:	Michael Capener R&R Specialist DRR 972.560.1020	
POC's Name: Title: Division: Telephone Number:	POC's Name: Title: Division: Telephone Number:			

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## SECTION I - OUTSOURCED INFORMATION SERVICE DESCRIPTION

---

### 1. Describe the outsourced service and its purpose.

The Federal Deposit Insurance Corporation (FDIC) maintains stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions, and managing receiverships. The primary objective of the FDIC as receiver is to maximize the value of failing and/or failed insured depository institutions and their assets.

The FDIC Division of Resolutions and Receiverships (DRR) utilizes the services of Nationwide Title Clearing (Nationwide) to provide nationwide title searches and ownership reports for potential sale, marketing and/or auctions of loan asset portfolios and Owned Real Estate (ORE) property of failing or failed institutions (FIs). These services are necessary in order to determine the existence and priority of a valid security interest in a particular asset, and to confirm the current condition of title prior to selling a particular real estate asset. Assets may include ORE properties and/or secured loan interests in single-family residential, commercial, or construction properties, along with other possible product types. These reports are generated for the Program Area ORE and Legal Department to determine ownership of assets (real properties and loans) in which the FDIC may have an ownership interest, thereby determining the course of action of disposition.

A title search<sup>1</sup> may be required on a "Full"<sup>2</sup>, "Current Owner"<sup>3</sup>, "Date Down"<sup>4</sup>, or "Tax Update"<sup>5</sup>" search basis. Once a title order for an asset is issued, Nationwide coordinates and facilitates the following services:

- Preparation of evidence of title through an examination or search, and generation of a historical summary in the form of a title report as permitted by local jurisdiction [e.g., a preliminary title report or title commitment (the "Report")]. As applicable, the Report lists any and all documents recorded in the public records in chronological order (newest to oldest) as are necessary, appropriate, or customary in the applicable jurisdiction within such title examination and abstract.
- Obtaining and updating chains of title<sup>6</sup> including a list of all instruments that create rights, interests, or burdens on the assets. (The title search covers a sufficient period of time for the title company to determine all owners of record, outstanding mortgages, liens, judgments or pending suits, outstanding tax claims, easements or rights of ways of any type, whether oil,

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<sup>1</sup> A title search includes a full coverage search and limited coverage search; other types include non-insured reports and foreclosure guarantee search.

<sup>2</sup> A "Full" title search covers at least four (4) owners or sixty (60) years, whichever results in the greatest amount of time.

<sup>3</sup> A "Current Owner" search verifies the current owners vested on title in land records. It shows every open mortgage found, recorded involuntary liens or financial encumbrances that could affect the property (based on the current owner), shows if the property is being foreclosed upon in land records and the last assignment of record for any open mortgage.

<sup>4</sup> A "Date Down" search includes a search of the property records from current owner's date of vesting title to the present, including complete deed information: grantees, grantors, execution and recording dates, recording references and legal description as well as all open mortgages/deed of trust.

<sup>5</sup> A "Tax Status Update" search includes a tax search on a specific property address to determine the property tax status (if current or delinquent).

<sup>6</sup> A chain of title is the sequence of historical transfers of title to a property. The "chain" runs from the present owner back to the original owner of the property. In situations where documentation of ownership is important, it is often necessary to reconstruct the chain of title. To facilitate this, a record of title documents may be maintained by a registry office or civil law notary.

gas, or mineral interests have been severed, and identifying any exceptions that may cloud the title to the property interest being sold. Each full title search covers at least 4 owners or 60 years, whichever results in the greatest amount of time.)

Nationwide is provided with a list of properties with written authorization to perform a search that will include property addresses, legal descriptions, and/or the Assessor's Parcel Numbers (APNs) for each property that is searched.

These services provide the FDIC with a clear understanding of all real properties or loans which it may have assumed ownership interest, in order to better facilitate accurate and efficient disposition.

**2. Status of the Outsourced Information Service Provider:**

- Solicitation/On-Boarding (Pre-Award; or At/Around the Time of Contract Award)
- Initial Assessment/Due Diligence (Post-Award)
- Ongoing Monitoring of Contract (Post-Award)
- Sunset or Disposition of Contract (Post-Award; At or Near Contract Expiration)
- Other (*Explain*):

---

## **SECTION II – DATA TYPE, SOURCES, AND USE**

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**3. Describe all information/data that will be collected, used, maintained or generated by the Outsourced Provider (Vendor) as part of the services provided under the contract. If no information/data is involved, select Not Applicable.**

The FDIC collects the full names, addresses, and APNs of property owners from FIs and transmits them to Nationwide to be used to generate ownership reports.

Nationwide uses this information to generate property ownership reports from public records and delivers them to the FDIC via their secure web portal, TrackingLINK.<sup>7</sup> The property ownership reports contain personally identifiable information (PII) such as the property owners' full names, addresses, and any legal documents or records that may be found when conducting a public records search.

**4. Describe the intended purpose and use of the above information/data. If no information/data is involved, select Not Applicable.**

The purpose of the title reports generated by Nationwide is to translate the public information into a format that can be more readily assessed by the FDIC to determine the Corporation's ownership interests in real properties and loans.

---

<sup>7</sup> TrackingLINK is the web services Secure Client Access portal on the Nationwide Title Clearing website. It is used to facilitate client interaction with Nationwide and provides clients the necessary status information, images, and tools to stay connected with Nationwide and the services being performed.

5. What types of personally identifiable information (PII) are (or may be) included in the information specified above? (This is not intended to be an all-inclusive list. Specify other categories of PII, as needed.):

PII Element	Yes	No
Full Name	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date of Birth	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Place of Birth	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Social Security Number	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Employment Status, History or Information	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mother's Maiden Name	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Certificates (e.g., birth, death, naturalization, marriage, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Medical Information (Medical Records Numbers, Medical Notes, or X-rays)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Home Address	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Phone Number(s) (non-work)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Email Address (non-work)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Employee Identification Number (EIN)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Financial Information (e.g., checking account #/PINs/passwords, credit report, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Driver's License/State Identification Number	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vehicle Identifiers (e.g., license plates)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal Documents, Records, or Notes (e.g., divorce decree, criminal records, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Education Records	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Criminal Information	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Military Status and/or Records	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Investigation Report or Database	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Biometric Identifiers (e.g., fingerprint, voiceprint)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Photographic Identifiers (e.g., image, x-ray, video)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (Specify: Assessor's Parcel Number (APN))	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**6. What are the sources\* of data (both PII *and* non-PII) for the outsourced service/project? How is the data derived?**

Data Source <sup>b</sup> (List all sources that the Outsourced Provider collects, obtains or receives data from, as part of the services provided under the contract.)	Type of Data Provided by Source & How It is Derived (Describe the type of PII and non-PII data provided by each source. If PII is included in the data, list the specific PII elements, and explain how the PII is derived.)	Does Data Include PII?
FDIC/DRR Personnel	Authorized FDIC/DRR personnel collect the full names, addresses, and APNs of property owners from FIs and uploads this data into Nationwide's secure web portal, TrackingLINK.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Public Records	Nationwide uses the authority granted by the FDIC's written authorization to conduct public records searches of the properties and loans collected from a FI. The information accessed and collected during these searches may include the property owners' full names, addresses, and any legal documents or records that may be retrieved from the courts.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**7. As part of the outsourced service/project, will FDIC or the Outsourced Service Provider retrieve data or records using a personal identifier (e.g., name, address, SSN, EIN, or other unique identifier)?**

No

Yes (Explanation: The outsourced vendor accesses information from public tax records using names, addresses, and property identification numbers/assessor's parcel numbers. These elements are used to properly identify the properties and loans being searched.)

Not applicable

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<sup>b</sup> Examples of potential data sources include, but are not limited to: internal (FDIC) or external (non-FDIC) systems, websites, individual members of the public (e.g., customers, borrowers, etc.), FDIC employees, FDIC contractors, credit bureaus, commercial entities, public records, government agencies, etc.



**This completes the PTA.**

- Do not complete the rest of the form, if the service provider is not processing or maintaining sensitive PII. This is the case, if you checked:
  - NOT APPLICABLE for question 3 and NO for all items in question 5; OR
  - Only Full Name in question 5.
- Continue completing the remainder of the form, i.e., Sections III thru VI in their entirety (questions 8 thru 16), if the service provider is processing or maintaining sensitive PII. This is the case, if you checked:
  - YES for Social Security Number (SSN) in question 5; OR
  - YES for SSN or for Full Name in addition to one or more boxes in question 5.
- If you have questions or are unsure about whether or not you should complete the remainder of this form, please contact your Division ISM or the Privacy Program Office ([privacy@fdic.gov](mailto:privacy@fdic.gov)).

### SECTION III – DATA ACCESS AND SHARING

**8. In the table below, specify the systems/applications and parties (FDIC and non-FDIC) that the Outsourced Service Provider will share or provide PII data to as part of the outsourced service. (Check "No" or "Yes" for each category. For each category checked "Yes," specify who will have access to, be provided with, or maintain the PII, what PII elements will be accessed/shared/maintained by them, how the access or sharing will occur, and the purpose and use of this PII.)**

PII Will Be Accessed By and/or Provided To:	Yes	No	If Yes, Explain How and Why the PII Will Be Accessed/Shared
<b>8a. FDIC Outsourced Service Provider (OSP) Staff; OSP Subcontractors; and/or OSP Systems</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The FDIC provides authorized Nationwide personnel with data derived from FIs in order to perform the title search services described in Section 1. This transfer of data occurs via the TrackingLINK secure web portal. The portal is hosted on Nationwide's servers and access control is provided by Nationwide to FDIC personnel/ Receivership Assistance Contractors (RACs), as well as to Nationwide staff conducting the title search services that access the application via HTTPS.
<b>8b. FDIC Personnel and/or FDIC Systems/ Applications</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The FDIC requires title reports on properties and loans from FIs to determine the ownership interest the FDIC may have. This information is uploaded into the TrackingLINK web portal by Nationwide and retrieved by authorized FDIC/DRR Asset Marketing & Management Department staff to assist in disposition of the assets in receivership.
<b>8c. Individual Members of the Public (e.g., bidders, investors, borrowers, customers, etc.)</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable.
<b>8d. Other Non-FDIC Entities/ Parties and/or Non-FDIC Systems/Applications</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable.
<b>8e. Federal, State, and/or Local Agencies</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable.
<b>8f. Other</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable.

**9. If data will be provided to, shared with, or maintained by non-FDIC entities (such as government agencies, contractors, or Outsourced Information Service Providers), have any of the following agreements been issued?**

Data Protection and/or Sharing Agreements	Yes	No
FDIC Confidentiality Agreement (Corporation)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FDIC Confidentiality Agreement (Individual)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Non-Disclosure Agreement (NDA)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Memoranda of Understanding (MOU)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information Sharing Agreements (ISA)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Authentication Risk Assessment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other Applicable Agreement(s) <i>(Specify: _____)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you answered NO to any item above, please provide additional information if available:**

Nationwide is an outsourced service provider and therefore is not subject to an MOU or ISA.

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## SECTION IV – NOTICE AND CONSENT

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**10. Do individuals have the opportunity to decline to provide information or to consent to particular uses of their information (other than required or authorized uses)?**

No. Individuals do not have the opportunity to "opt out" of providing their data and/or consenting to particular uses of their information. (Explanation: The PII from property and loan owners of FIs is derived from bank records in FDIC receivership; individuals do not have an opportunity to opt out or provide consent for the use of the data for these purposes. The public records searches are performed with written authorization from the FDIC, which possesses the authority to conduct inquiries on assets in receivership.)

Yes. Individuals have the opportunity to decline to provide their personal data or to consent to particular uses of their information.

Not applicable. Information is not collected directly from individuals.

**11. If PII is being collected via a public-facing website and/or application as part of this outsourced service, has the Outsourced Information Service Provider posted any of the following types of privacy policies or Privacy Act notices?**

No

Yes (*If yes, check applicable box(es) below.*)

Link to FDIC Privacy Policy

FDIC Privacy Act Statement

Contractor Privacy Policy or Statement

No Privacy Policy has been posted

Not applicable

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## SECTION V – DATA SECURITY AND ACCURACY

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**12. Please assert what administrative procedures and technical safeguards are in place to protect sensitive PII data in the Outsourced Information Service Provider's care. *[Provide the name of the Outsourced Service Provider and check all applicable box(es).]***

Nationwide Title Clearing will go through the security review required by the FDIC's Outsourced Information Service Provider Assessment Methodology to determine and/or verify their having appropriate physical, technical, and administrative security measures to safeguard FDIC-provided PII and other sensitive data. If it has gone through the Methodology, has it been approved?  NO  YES  IN PROGRESS

The FDIC conducts background investigations (BIs) on key Nationwide Title Clearing personnel and other applicable personnel prior to their beginning work on the contract.

- Nationwide Title Clearing is subject to periodic compliance reviews by FDIC. Per the contract, scheduled and unannounced inspections and assessments of the Outsource Service Provider's facilities, personnel, hardware, software and its security and privacy practices by either the FDIC information technology staff, the FDIC Inspector General, or the U.S. General Accountability Office (GAO). These inspections may be conducted either by phone, electronically or in-person, on both a pre-award basis and throughout the term of the contract or task order, to ensure and verify compliance with FDIC IT security and privacy requirements.
- Other (Explain any other administrative and/or technical safeguards in place to protect PII data in the Outsourced Information Service Provider's care.) *Attach the Contract Clause Verification Checklist to the back of this form.*

**13. What are the procedure(s) for ensuring that the information maintained is accurate, complete and up-to-date? [Check all applicable box(es) and insert the appropriate response and System/Project name.]**

- Data is collected directly from individuals and/or from the failed financial institutions. As such, the FDIC and its vendors rely on the individuals and/or financial institutions to provide accurate data.
- The vendor/contractor works with FDIC to verify the integrity of the data [before, in conjunction with, and/or after] inputting it into the system or using it to support the project.
- As necessary, an authorized user of the Title Search and Reporting Service checks the data for completeness by reviewing the information, verifying whether or not certain documents or data is missing, and as feasible, updating this data when required.
- Other (*Explanation: The public records searches are conducted on assets that are actively in receivership with the FDIC.*)

**14. In terms of assuring proper use of the data, please assert whether the following statements are true for the Outsourced Information Service Provider. (Check all applicable box(es) and insert the name of the Outsourced Information Service Provider and title of the firm's senior management official.)**

- Within FDIC, the Nationwide Title Clearing Program Manager/Data Owner, Technical Monitors, Oversight Manager, and DRR Information Security Manager (ISM) are collectively responsible for assuring proper use of the data. In addition, it is every FDIC user's responsibility to abide by FDIC data protection rules which are outlined in the FDIC's Information Security and Privacy Awareness training course which all employees take annually and certify that they will abide by the corporation's Rules of Behavior for data protection.
- Additionally, the Outsourced Information Service Provider is responsible for assuring proper use of the data. Policies and procedures have been established to delineate this

responsibility, and the vendor has designated the Nationwide Title Clearing Project Manager to have overall accountability for ensuring the proper handling of data by vendor personnel who have access to the data. All vendor personnel with access to the data are responsible for protecting privacy and abiding by the terms of their FDIC Confidentiality and Non-Disclosure Agreements, as well as the vendor's corporate policies for data protection. Access to certain data may be limited, depending on the nature and type of data. (Refer to Section III of this Privacy Impact Assessment for more information on data access criteria.)

- The Outsourced Provider must comply with the Incident Response and Incident Monitoring contractual requirement.
- None of the above. (*Explain why no FDIC staff or Outsourced Information Service Provider personnel have been designated responsibility for assuring proper use of the data.*)

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## **SECTION VI – DATA RETENTION AND DISPOSAL**

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**15. Where will the Outsourced Service Provider store or maintain the PII data identified in question 5? Describe both electronic and physical storage repositories, as applicable.**

The servers used to host the TrackingLINK secure web portal are located in Nationwide's main office building. The data is maintained in Nationwide's TrackingLINK secure web portal. The portal itself is secured with username/password authentication and protected via SSL/SSH. This is the only repository for PII collected and generated by Nationwide for the execution of this contract.

**16. Specify the period of time that data is retained by the Outsourced Service Provider and the specific procedures for disposing of or returning the data at the end of the retention period or contract, whichever is first.**

Data is retained for a period of seven (7) years from the date of delivery in the absence of a specific retention schedule in the contract and is automatically and securely destroyed/deleted after the period has elapsed.

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**SECTION VII - PRIVACY EVALUATION AND COMMENTS (*Completed by FDIC Privacy Program Office Staff Only*)**

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Date Assigned to Reviewer: 03/12/15	Name of Privacy Program Reviewer: S.Edwards	Date Review Completed: 03/13/15
<b>Privacy Sensitivity Designation</b> <input checked="" type="checkbox"/> This is an existing outsourced service that involves sensitive PII; therefore, a PIA has been completed. <input type="checkbox"/> This is an existing outsourced service that has undergone a change that affects privacy; therefore, a PIA has been completed. <input type="checkbox"/> This is a new or existing outsourced service that does not involve any sensitive PII; therefore, no PIA required. <input type="checkbox"/> Other ( <i>Explain</i> )		
<b>Types of PII Maintained within Outsourced Service</b> <input type="checkbox"/> None <input checked="" type="checkbox"/> Public <input type="checkbox"/> Internal to FDIC <input type="checkbox"/> Business Relationship with FDIC		
<b>Privacy Act System of Records Notice (SORN) Requirements</b> Has a Privacy Act System of Records Notice (SORN) been published in the Federal Register for this outsourced service? <input checked="" type="checkbox"/> Yes. The applicable SORN for this outsourced service is: <u>30-64-0013 Insured Financial Institution Liquidation Records</u> <input type="checkbox"/> No. Explain why a SORN is not required: <input type="checkbox"/> To Be Determined		
<b>Reviewer Comments:</b>		



FEDERAL DEPOSIT  
INSURANCE CORPORATION  
INSURING AMERICA'S FUTURE

# PRIVACY IMPACT ASSESSMENT

## Nationwide Title Clearing (Nationwide)

March 2015

FDIC External Service

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## System Overview

The Federal Deposit Insurance Corporation (FDIC) maintains stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions, and managing receiverships. The primary objective of the FDIC as receiver is to maximize the value of failing and/or failed insured depository institutions and their assets.

The FDIC Division of Resolutions and Receiverships (DRR) utilizes the services of Nationwide Title Clearing (Nationwide) to provide nationwide title searches and ownership reports for potential sale, marketing and/or auctions of loan asset portfolios and Dwned Real Estate (ORE) property of failing or failed institutions (FIs). These services are necessary in order to determine the existence and priority of a valid security interest in a particular asset, and to confirm the current condition of title prior to selling a particular real estate asset. Assets may include DRE properties and/or secured loan interests in single-family residential, commercial, or construction properties, along with other possible product types. These reports are generated for the Program Area ORE and Legal Department to determine ownership of assets (real properties and loans) in which the FDIC may have an ownership interest, thereby determining the course of action of disposition. A title search<sup>1</sup> may be required on a "Full"<sup>2</sup>, "Current Owner"<sup>3</sup>, "Date Down"<sup>4</sup>, or "Tax Updates"<sup>5</sup> search basis. Once a title order for an asset is issued, Nationwide coordinates and facilitates the following services:

- Preparation of evidence of title through an examination or search, and generation of a historical summary in the form of a title report as permitted by local jurisdiction [e.g., a preliminary title report or title commitment (the "Report")]. As applicable, the Report lists any and all documents recorded in the public records in chronological order (newest to oldest) as are necessary, appropriate, or customary in the applicable jurisdiction within such title examination and abstract.
- Obtaining and updating chains of title<sup>6</sup> including a list of all instruments that create rights, interests, or burdens on the assets. (The title search covers a sufficient period of time for the title company to determine all owners of record, outstanding mortgages, liens, judgments or pending suits, outstanding tax claims, easements or rights of ways of any type, whether oil, gas, or mineral interests have been severed, and identifying any exceptions that may cloud the title to the property interest being sold. Each full title

<sup>1</sup> A title search includes a full coverage search and limited coverage search; other types include non-insured reports and foreclosure guarantee search

<sup>2</sup> A "Full" title search covers at least four (4) owners or sixty (60) years, whichever results in the greatest amount of time.

<sup>3</sup> A "Current Owner" search verifies the current owners vested on title in land records. It shows every open mortgage found, recorded involuntary liens or financial encumbrances that could affect the property (based on the current owner), shows if the property is being foreclosed upon in land records and the last assignment of record for any open mortgage.

<sup>4</sup> A "Date Down" search includes a search of the property records from current owner's date of vesting title to the present, including complete deed information, grantees, grantors, execution and recording dates, recording references and legal description as well as all open mortgages/deed of trust.

<sup>5</sup> A "Tax Status Update" search includes a tax search on a specific property address to determine the property tax status (if current or delinquent).

<sup>6</sup> A chain of title is the sequence of historical transfers of title to a property. The "chain" runs from the present owner back to the original owner of the property. In situations where documentation of ownership is important it is often necessary to reconstruct the chain of title. To facilitate this, a record of title documents may be maintained by a registry office or civil law notary.



search covers at least 4 owners or 60 years, whichever results in the greatest amount of time.)

Nationwide is provided with a list of properties with written authorization to perform a search that will include property addresses, legal descriptions, and/or the Assessor's Parcel Numbers (APNs) for each property that is searched.

These services provide the FDIC with a clear understanding of all real properties or loans which it may have assumed ownership interest, in order to better facilitate accurate and efficient disposition.

## **Personally Identifiable Information (PII) in NATIONWIDE**

NATIONWIDE collects personally identifiable Information (PII) and non PII information such as: full name, home address, Legal Documents, Records, or Notes (e.g., divorce decree, criminal records, etc.) and Assessor's Parcel Number (APN).

## **Purpose & Use of Information in NATIONWIDE**

The purpose of the title reports generated by Nationwide is to translate the public information into a format that can be more readily assessed by the FDIC to determine the Corporation's ownership interests in real properties and loans.

## **Sources of Information in NATIONWIDE**

Authorized FDIC/DRR personnel collect the full Haines, addresses, and APNs of property owners from FIs and upload this data into Nationwide's secure web portal, Tracking LINK.

Nationwide uses the authority granted by the FDIC's written authorization to conduct public records searches of the properties and loans collected from a FI. The information accessed and collected during these searches may include the property owners' full names, addresses, and any legal documents or records that may be retrieved from the courts.

## **Notice & Consent**

Individuals do not have the opportunity to "opt out" of providing their data and/or consenting to particular uses of their information. The PII from property and loan owners of FIs is derived from bank records in FDIC receivership; individuals do not have an opportunity to opt out or provide consent for the use of the data for these purposes. The public records searches are performed with written authorization from the FDIC, which possesses the authority to conduct inquiries on assets in receivership.).



## Access to Data in NATIONWIDE

The FDIC provides authorized Nationwide personnel with data derived from FIs in order to perform the title search services. This transfer of data occurs via the TrackingLINK secure web portal. The portal is hosted on Nationwide's servers and access control is provided by Nationwide to FDIC personnel/Receivership Assistance Contractors (RACs), as well as to nationwide staff conducting the title search services that access the application via HTTPS.

The FDIC requires title reports on properties and loans from FIs to determine the ownership interest the FDIC may have. This information is uploaded into the TrackingLINK web portal by Nationwide and retrieved by authorized FDIC/DRR Asset Marketing & Management Department staff to assist in disposition of the assets in receivership.

## Data Sharing

Other Systems that Share or Have Access to Data in the System:

System Name	System Description	Type of Information Processed
N/A	N/A	N/A

## Data Accuracy in NATIONWIDE

Data is collected directly from individuals and/or from the failed financial institutions. As such, the FDIC and its vendors rely on the individuals and/or financial institutions to provide accurate data.

As necessary, an authorized user of the Title Search and Reporting Service checks the data for completeness by reviewing the information, verifying whether or not certain documents or data is missing, and as feasible, updating this data when required.

## Data Security for NATIONWIDE

Nationwide Title Clearing is subject to periodic compliance reviews by FDIC. Per the contract, scheduled and unannounced inspections and assessments of the Outsource Service Provider's facilities, personnel, hardware, software and its security and privacy practices by either the FDIC information technology staff, the FDIC Inspector General, or the U.S. General Accountability Office (GAO). These inspections maybe conducted either by phone, electronically or in-person, on both a pre-award basis and throughout the term of the contract or task order, to ensure and verify compliance with FDIC IT security and privacy requirements.



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(Nationwide)

## System of Records Notice (SORN)

NATIONWIDE operates under the FDIC Privacy Act SORN, 30-64-0013, *Insured Financial Institution Liquidation Records*

### Contact Us

To learn more about the FDIC's Privacy Program, please visit:  
<http://www.fdic.gov/about/privacy/>.

If you have a privacy-related question or request, email [Privacy@fdic.gov](mailto:Privacy@fdic.gov) or one of the [FDIC Privacy Program Contacts](#). You may also mail your privacy question or request to the FDIC Privacy Program at the following address: 3501 Fairfax Drive, Arlington, VA 22226.

